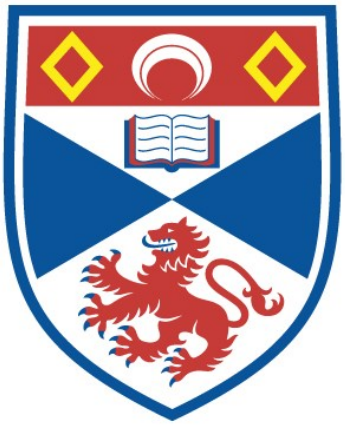
HUGO GROTIUS AND THE INVENTION OF THE 'GROTIAN TRADITION' IN INTERNATIONAL RELATIONS

Renée Jeffery

A Thesis Submitted for the Degree of PhD
at the
University of St Andrews



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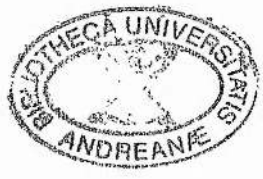

Declaration

i) I, Renée Jeffery, hereby certify that this thesis, which is approximately 98 650 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

Date: 21/05/04 Signature of Candidate:

ii) I was admitted as a research student in September 2001 and as a candidate for the degree of PhD in September 2001; the higher study for which this is a record was carried out in the University of St Andrews between 2001 and 2004.

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iii) I hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate for the degree of PhD in the University of St Andrews and that the candidate is qualified to submit this thesis in application for that degree.

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Abstract

This thesis is an intellectual history of the 'Grotian tradition' from the works of Hugo Grotius to the contemporary writings of the 'English School'. Its central argument contends that, contrary to its contemporary conceptualisation, the Grotian tradition has not, historically speaking, been a tradition of thought about international society. Rather, it is a moral tradition, derived in essence, if not always in substance, from Grotius' most famous work *De Jure Belli ac Pacis*, and perpetuated in the international legal writings of a range of scholars including Samuel Pufendorf, James Kent, Henry Wheaton, Cornelius van Vollenhoven and Hersch Lauterpacht before being transformed into its current form in the works of Martin Wight and Hedley Bull. In explicating this argument, this thesis pursues two inter-related lines of inquiry. The first is concerned with the meaning of the term 'Grotian', both in relation to Hugo Grotius and as it has been employed in subsequent scholarship. In doing so, it introduces a three-tiered moral scheme that is central to Grotius' thought and highlights its perpetuation in international legal and political thought. The second line of inquiry considers what it means, both in theoretical and practical terms, to designate a set of thinkers and ideas a 'tradition' and considers the epistemological ramifications of doing so. As such, it is concerned not only with the manner in which the term 'tradition' has been employed by proponents of the 'Grotian tradition' but seeks to highlight some of the broader implications associated with the construction of traditions for the discipline of International Relations.

Contents

Preface

This is a thesis about Hugo Grotius (1583-1645) and the invention of the 'Grotian tradition' in International Relations scholarship. It is, at heart, an intellectual history of the 'Grotian tradition' from the works of Grotius to its most prominent articulation in the twentieth century scholarship of the so-called 'English School'. In large part, it is driven by the recognition that as the proliferation of 'Grotian' traditions evident in twentieth century scholarship continues to grow in new and divergent directions and, as an increasing number of scholars are identifying themselves as 'Grotians', an extended study of the 'Grotian tradition' and, by extension, what it means to be 'Grotian', has never been more pertinent. Thus, although it does not claim to constitute a comprehensive account of Grotius' works and their impact on subsequent scholarship, this thesis aims to begin the process of piecing together almost four hundred years of 'Grotian' scholarship.

Alongside this central impetus, this thesis pursues a secondary aim, namely, the provision of a substantive engagement with the available works of Grotius that are of relevance to International Relations. In large part, this is driven by the recognition that although Grotius stands as a relatively prominent figure in contemporary International Relations scholarship, no such work exists. Although a number of intellectual biographies are available, the most notable of which is

Charles Edwards' *Hugo Grotius The Miracle of Holland,*[1] there is a need for a more comprehensive work that takes Grotius' early writings into consideration. Indeed, since the publication of Edwards' work, a number of Grotius' early works have been published, both in vernacular languages and as English translations, thereby facilitating a more comprehensive account of the development of Grotius' thought. In addition, although a painstakingly researched exposition of *De Jure Belli ac Pacis* has appeared in the form of Onuma Yasuaki's edited collection, *A Normative Approach to War: Peace, War and Justice in Hugo Grotius,*[2] the works from which Grotius' masterpiece was derived remain largely unexplored in International Relations scholarship. Indeed, perhaps closest to incorporating a comprehensive account of Grotius' intellectual development are Richard Tuck's *Natural rights theories, Philosophy and Government 1572-1651* and *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* although, as will be seen as this thesis progresses, considerable problems are associated with the portrayal of Grotius in all of these works.[3]

Thus, although most contemporary scholarship focuses exclusively on Grotius' most famous work *De Jure Belli ac Pacis (The Rights of War and Peace),* this

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[1] Charles Edwards, *Hugo Grotius The Miracle of Holland: A Study in Political and Legal Thought,* (Chicago: Nelson-Hall, 1981).

[2] Onuma Yasuaki (ed.), *A Normative Approach to War: Peace, War and Justice in Hugo Grotius,* (Oxford: Clarendon Press, 1993).

[3] Richard Tuck, *Natural rights theories: their origin and development,* (Cambridge: Cambridge University Press, 1979); *Philosophy and Government 1572-1651,* (Cambridge: Cambridge University Press, 1993); *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant,* (Oxford: Oxford University Press, 1999).

thesis draws on a range of his early and less prominent works often classified as 'historical' or 'theological' in orientation. In doing so, however, due to the limited accessibility of many of these works, the choice of editions and translations used has very often been dictated by availability. As the most commonly referred to English translation, I have primarily relied on Francis W. Kelsey's 1964 edition of *De Jure Belli ac Pacis* whilst also referring, on occasions, to A.C. Campbell's 1901 edition, entitled *The Rights of War and Peace,* and, in light of its influence on subsequent scholarship, Thomas Manley's 1738 English translation of Jean Barbeyrac's edition of the work.[4] For similar reasons, I have also used editions of the works of Samuel Pufendorf, Emerich de Vattel, Christian von Wolff, Samuel Rachel, Cornelius van Bykershoek, and Henry Wheaton published as part of the Carnegie Endowment for International Peace's series on the "Classics Of International Law".

[4] Hugo Grotius, *De Jure Belli ac Pacis Libri Tres (The Law of War and Peace),* trans. Francis W. Kelsey, (New York: Oceana Publications, 1964); *The Rights of War and Peace Including the Law of Nature and of Nations,* trans. A.C. Campbell, (Washington: M. Walter Dunne, 1901); *The Rights of War and Peace in Three Books Wherein are Explained, the Law of Nature and Nations, and the Principal Points relating to Government, to which are Added, All the large Notes of Mr J. Barbeyrac,* trans. Thomas Manley, (London: Inys & Manley, 1738).

Acknowledgements

In pursuing this slightly eccentric endeavour I have been supported in a variety of ways by a number of people and organisations. Financially, I am particularly grateful to Universities UK for the provision of an Overseas Research Scholarship and the University of St Andrews for their generous support in the form of a St Andrews Research Scholarship. Without such financial backing, in particular that provided by the University of St Andrews, it would not have been possible for me to enjoy the invaluable experience of writing my PhD in the United Kingdom. In addition, I would also like to thank the Postgraduate Committee of the School of International Relations at the University of St Andrews for enabling me to attend and present a paper at the 2004 International Studies Association Conference in Montreal.

In pursuing a slightly obscure and heavily historical thesis I have spent much of the past three years trawling the slightly strange smelling archives and special collections of a number of libraries. In this I have been particularly aided by the librarians and archivists of the University of St Andrews Rare Books Collection, the King's College Special Collection at the University of Aberdeen, the Law and Europa Library at the University of Edinburgh, the Law Library at the University of Dundee and the Koninklijke Bibliotheek in The Hague.

Marc Williams must be credited with first inspiring my interest in international relations as an undergraduate at the University of New South Wales in Sydney. As my honours dissertation supervisor, Marc introduced me not only to the world of international relations theory but, through the dedication with which he guided my first piece of research and his continuing support, has taught me what it is to be a great teacher. I was also fortunate enough to enroll in Michael Wesley's notoriously difficult "Theories and Methods of International Relations" course in my final year at UNSW, a course that has continued to stand me in good stead. It was on Michael's recommendation that I first applied to, and later accepted, a place to do my PhD at the University of St Andrews as he had done some years earlier. It has proven to be a very good call.

As my PhD supervisor, Nick Rengger has dealt both with me and the trials and tribulations this thesis has brought with characteristic grace, humour and understanding. A learned friend of mine once remarked that "there is a logic to Rengger, it is just often hard to work out precisely what it is". I have to admit that after three years I am not sure I'm there yet! What I do know is that Nick must be credited with introducing me to the world of ideas and for this I will always be grateful. He has not only been an excellent mentor and source of inspiration, but a great friend. Amongst the St Andrews crowd, Ian Hall has also been a source of continual criticism and advice throughout my time here. Similarly, Mitchell Rologas has been a great sparring partner over the years and has indulged my need to argue about everything. Finally, I also thank Mark Imber for his continual

encouragement and for doing such a great job welcoming me to life in St Andrews and helping me find my feet as a new PhD student.

I will also always cherish the intellectual engagement I enjoyed as a member of the theory reading group and will look back at the heated debates and continual arguments that took place in the back room of the Whey Pat Inn, the sleazy black leather lounges of the Byer Theatre Bar and, on those endless Scottish summer nights, the courtyard of the Westport, with great fondness. These meetings stand out in my mind as one of the highlights of my time in St Andrews and I am very sad to be leaving the friendships that they fostered. I have also benefited greatly from discussions with and encouragement from a number of scholars who have visited St Andrews during my time here or whom I have met at BISA and ISA conferences, in particular, although by no means exclusively, Charles Bietz, Edward Keene and Tony Lang.

As always, I have also learned an awful lot from my fellow graduate students, in particular, my first office mate, Chris Constantian, along with Amanda Beattie, Alexa Royden, Maria Siemer, Liam Price and Anthony Richards. Most of all, Su Dutta has been an unending source of support, friendship, encouragement and fun throughout my time in St Andrews. Similarly Kate Spresser has somehow managed to be the best friend I could wish for even from the other side of the world. Finally, my family has always been an unquestioning source of support in this endeavour. Thank you to Cynthia, Tim and Jo for your encouragement and interest in what it is

that I do. To my brother Stephen for being brave enough to head into the world of International Relations himself; I look forward to many years of discussion and argument in the future. Finally, to my parents, David and Annemarie, who have, for as long as I can remember, sought to foster, encourage and support my interest in all things academic. In this I am very much a product of my upbringing and for that I will always be grateful.

Glossary of Abbreviations

Works by Hugo Grotius

DJB *De Jure Belli ac Pacis Libri Tres* (The Law of War and Peace in Three Books)

DJP *De Jure Praedae Commentarius* (Commentary on the Law of Prize and Booty)

DA *De Antiquitate Reipublicae Batavicae* (The Antiquity of the Batavian Republic)

RE *De Republica Emendanda* (An Emendation of the Republic)

CiT *Commentarius in Theses XI* (Commentary on Eleven Theses)

Works by Other Authors

EJU *Elementorum Jurisprudentiae Universalis Libri Duo* (Elements of Universal Jurisprudence in Two Books) by Samuel Pufendorf

DJN *De Jure Naturae et Gentium Libri Octo* (The Law of Nature and Nations in Eight Books) by Samuel Pufendorf

OHC *De Officio Hominis et Civis juxta Legem naturalem* (On the Duty of Man and Citizen) by Samuel Pufendorf

JGM *Jus Gentium Methodo Scientifica Pertractatum* (The Law of Nations Treated According to a Scientific Method) by Christian von Wolff

LDG *Le Droit des Gens, ou Principes de la Loi Naturelle appliqués à la Conduit et aux Affaires des Nations et des Souverains* (The Law of

Nations or the Principles of the Law of Nature Applied to the Conduct and to the Affairs of Nations and of Sovereigns) by Emerich de Vattel

TGS *Transactions of the Grotius Society*

I

Traditions of Thought and the 'Grotius Problem' in International Relations

> Not only is there no consensus over the nature of the man, his work, and how it is to be used, these divisions have often obscured the fact that there is no agreement over what it actually means to be 'Grotian'. Self-confessed members see themselves, and their tradition, in markedly distinct ways whilst claiming their often contradictory values to be quintessentially 'Grotian'. These contradictions were perhaps a consequence of the Grotian predilection for inconclusiveness.[1]

In the discipline of International Relations,[2] Hugo Grotius is a name more synonymous with a tradition than with a man. It is a name evoked with relative frequency in contemporary scholarship, and yet, little consensus exists as to precisely what it means to be 'Grotian', what the 'Grotian tradition' entails or, indeed, whether or not Grotius can be considered a 'Grotian' himself. Echoing these sentiments, Benedict Kingsbury and Adam Roberts note in their introduction to *Hugo Grotius and International Relations,* "[t]he claim that there is a 'Grotian tradition' of thought about international relations has often been made rather loosely, with little discussion of what is meant by a 'tradition' or why a particular

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[1] Karma Nabulsi, *Traditions of War: Occupation, Resistance and the Law,* (Oxford: Oxford University Press, 1999), p.134.

[2] In accordance with convention, the capitalised International Relations designates the study of the lower case international relations.

tradition is held to be 'Grotian'."[3] Thus, in its most common incarnation, the 'Grotian tradition' simply exists as an amorphous set of ideas vaguely centered around "a commitment to the idea of international society."[4] Convenient though it is, this vague conceptualisation belies the fact that a range of 'Grotian' traditions operate in the discipline, each founded, whether consciously or otherwise, on a particular understanding of what is meant by the term 'tradition', and each conceiving the value of Grotius' works relative to this. Thus, as increasing numbers of International Relations theorists have come to describe themselves as 'Grotians' in recent scholarship, albeit in distinctly divergent ways, an extended engagement with the range of problems inherent in the construction of the 'Grotian tradition' has never been more timely or pertinent.[5]

In light of these observations, and the recognition that although the importance of Grotius' most famous work, *De Jure Belli ac Pacis (The Law of War and Peace),*[6] has been 'vast' in subsequent scholarship, "a comprehensive study of its intellectual

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[3] Benedict Kingsbury and Adam Roberts, "Introduction: Grotian Thought in International Relations" in *Hugo Grotius and International Relations,* ed. Hedley Bull, Benedict Kingsbury and Adam Roberts, (Oxford: Clarendon Press, 1990), p.51.

[4] *ibid.*

[5] For example, despite entertaining vastly different notions of what it is to be 'Grotians', Robert Jackson and Tim Dunne have both been recently attracted to the label. Robert H. Jackson, "International Community Beyond the Cold War", in *Beyond Westphalia? State Sovereignty and International Intervention,* ed. Michael Mastanduno and Gene M. Lyons, (Baltimore: The Johns Hopkins University Press, 1995), p.60; Tim Dunne, *Inventing International Society: A History of the English School,* (London: Macmillan, 1998), p.xi.

[6] Hugo Grotius, *De Jure Belli ac Pacis Libri Tres* (hereafter *DJB),* trans. Francis W. Kelsey, (New York: Oceana Publications, 1964).

impact has not yet appeared,"[7] this thesis constitutes an intellectual history of the 'Grotian tradition' in its various forms, from the works of Hugo Grotius to its most prominent articulation in the twentieth century scholarship of the 'English School'.[8] In doing so, it seeks to address two inter-related sets of questions. Drawing on the development of 'Grotian' scholarship in international legal and political thought, the first seeks to ascertain precisely what the term 'Grotian' has meant both historically and as it is employed in contemporary scholarship. It asks why particular sets of thinkers and ideas have been classified as 'Grotian' and, by extension, whether or not the term 'Grotian' retains any necessary connection to the historical figure of Hugo Grotius himself. The second set of questions is concerned with the concept of tradition and asks, in the first place, what it means to designate a set of thinkers or ideas as a tradition. Extending this line of inquiry further, it also seeks to investigate the implications of employing traditions as taxonomic devices according to which the conceptual boundaries and cognitive relationships between ideas are understood. In this endeavour, it seeks to draw a set of conclusions that are not only specific to the construction of the 'Grotian tradition' but that may be more broadly applicable to the discipline of International Relations. Considered together, these two sets of questions not only seek to elucidate both the construction and content of the 'Grotian tradition', but investigate the extent to which its epistemological parameters, membership and ultimate relationship to the figure of

[7] Benedict Kingsbury, "Grotius, Law and Moral Scepticism: Theory and Practice in the Thought of Hedley Bull" in *Classical Theories of International Relations*, ed. Ian Clark and Iver B. Neumann, (London: Macmillan, 1996), p.43.

[8] That group of scholars known as the 'English School' and whether or not they constitute a 'school' of thought are discussed in Chapter VII.

Hugo Grotius is determined by the manner in which what is 'Grotian' is conceived to be a 'tradition'.

Tradition in International Relations

Since its formal inception as a distinct scholarly discipline in the early twentieth century, International Relations has relied on the concept of 'tradition' as one of the central sources of its self-image.[9] Although the reasons for this are probably wide and varied and, I suspect, more accidental than consciously planned, the attraction of tradition is easy to see. Traditions are a "practical convenience."[10] Drawing together a range of at times disparate concepts, they constitute "a way of imposing order upon" what often appears to be "a complex and protean reality."[11] As James Der Derian writes;

> The power of tradition lies in its ability to condense and simplify...complexity into uniform, comprehensive and teachable

[9] The establishment of International Relations as a distinct discipline is conventionally held to have occurred with the founding of the first Chair of International Relations at the University College of Wales at Aberystwyth in 1919.

[10] R.B.J. Walker, *Inside/outside: International Relations as Political Theory,* (Cambridge: Cambridge University Press, 1993), p.27.

[11] Tim Dunne, "Mythology or methodology? Traditions in international theory", *Millennium: Journal of International Studies,* Vol.19, (1993), p.308.

expressions, like idealism and realism, classicalism and behaviouralism, or neorealism and international political economy, landmark traditions all.[12]

Although the concept of 'tradition' is itself the focus of the following chapter, it suffices here to say that, in this sense at least, 'tradition' is employed as a taxonomic device according to which ideas and their relations to one another are classified.

In this vein, the history of International Relations in the twentieth century is conventionally told as a chronological series of 'great debates' waged between the contending theoretical traditions and paradigms into which the discipline is alleged to be divided. Indeed, this propensity, both for dividing the discipline into 'often conflicting traditions' and for the subsequent taxonomic classification of its component theories, has become one of the 'hallmarks' of contemporary International Relations scholarship.[13] Although it has been both questioned and subsumed by a wide range of classification schemes in contemporary scholarship, for much of the twentieth century, International Relations was characterised in terms of the so-called 'first great debate' waged between realism and idealism, the two dominant traditions of the inter-war period identified in E.H. Carr's seminal

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[12] James Der Derian, "Introducing Philosophical Traditions in International Relations", *Millennium: Journal of International Studies,* Vol.17, No.2, (1988), p.190.

[13] Ian Clark, "Traditions of Thought and Classical Theories of International Relations", in *Classical Theories of International Relations,* ed. Ian Clark and Iver B. Neumann, (London: Macmillan, 1996), p.1.

work, *The Twenty Years' Crisis 1919-1939.*[14] In the work of Martin Wight, International Relations is divided into 'at least three' traditions; realism, rationalism and revolutionism,[15] while Michael Donelan, citing 'inflation', lists five; natural law, realism, fideism, rationalism and historicism.[16] Greater still, Nardin and Mapel's *Traditions of International Ethics* lists twelve,[17] while David Boucher divides political theories of international relations into three traditions; empirical realism, universal moral order and historical reason.[18] Finally, in the field of regime theory Stephen Krasner identifies three traditions; the structuralist or realist, modified structuralist or modified realist, and the Grotian.[19]

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[14] E.H. Carr, *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations,* ed. Michael Cox, (London: Palgrave, 2001); For objections to this see Peter Wilson, "The myth of the 'First Great Debate'", *Review of International Studies,* Vol.24, Special Issue, (December 1998), pp.49-58; Lucian Ashworth, *Creating International Studies: Angell, Mitrany and the Liberal Tradition,* (Aldershot: Ashgate, 1991). Despite arguments to the contrary, a range of contemporary theorists, including Emmanuel Navon, still maintain that this initial division continues to inform the categorisation of International Relations scholarship. Emmanuel Navon, "The 'Third Debate' revisited", *Review of International Studies,* Vol.27, (2001), p.611. For a critique of Navon's piece see Duncan S.A. Bell, "Political Theory and the functions of intellectual history: a response to Emmanuel Navon", *Review of International Studies,* Vol.29, (2003), pp.151-160.

[15] Martin Wight, *International Theory: The Three Traditions,* ed. Gabriele Wight and Brian Porter, (London: Leicester University Press, 1991).

[16] Michael Donelan, *Elements of International Theory,* (Oxford: Clarendon Press, 1990), p.2.

[17] Terry Nardin and David R. Mapel (eds.), *Traditions of International Ethics,* (Cambridge: Cambridge University Press, 1992).

[18] David Boucher, *Political Theories of International Relations: From Thucydides to the Present,* (Oxford: Oxford University Press, 1998).

[19] Stephen Krasner, "Structural causes and regime consequences: regimes as intervening variables", *International Organization,* Vol.36, No.2, (Spring 1982), pp.185-206.

Following the infusion and general misappropriation of Thomas Kuhn's seminal work on the role of paradigms in scientific research, the 'traditions' have, in some quarters, become 'paradigms'.[20] Thus, following the second, methodologically inspired debate waged between the behaviouralists, inspired by the methods of the natural sciences, and proponents of the 'traditional' approach to international relations, came the third or 'inter-paradigm' debate.[21] In this vein, both Banks, and Olsen and Groom divide International Relations into three contending paradigms; realism, pluralism and structuralism.[22] With respect to Kuhn's original notion of paradigms as successive phases in the development of knowledge, each to be discarded as new and more effective sets of ideas are developed, Vazquez describes a progression in International Relations, through the idealist and realist phases,

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[20] Thomas Kuhn, *The Structure of Scientific Revolutions,* (Chicago: University of Chicago Press, 1962).

[21] Steve Smith, "The Self-Images of a Discipline: A Genealogy of International Relations Theory", in *International Relations Theory Today,* ed. Ken Booth and Steve Smith, (Cambridge: Polity Press, 1995), pp.1-37. Emanating from this third debate is, in Yosef Lapid's view, a more fundamental conflict between the positivist and post-positivist approaches to international relations. Similarly, Ole Wæver contends that we are "probably *after* the fourth debate" waged between Robert Keohane's division of international organization into rationalism and reflectivism. Yosef Lapid, "The Third Debate: On the Prospects of International Theory in a Post-Positivist Era", *International Studies Quarterly,* Vol.33, (1989), pp.235-251; Ole Wæver, "The rise and fall of the inter-paradigm debate", in *International theory: positivism and beyond,* ed. Steve Smith,, Ken Booth and Marysia Zalewski, (Cambridge: Cambridge University Press, 1996), pp.149-185; Robert O. Keohane, "International Institutions: Two Approaches", in *International Theory: Critical Investigations,* ed. James Der Derian, (Houndmills: Macmillan, 1995), pp.279-307.

[22] Michael Banks, "The Inter-Paradigm Debate", in *International Relations: A Handbook of Current Theory,* ed. Margot Light and A.J.R. Groom, (London: Frances Pinter, 1985); William C. Olsen and A.J.R. Groom, *International Relations Then & Now: Origins and Trends in Interpretation,* (London: Routledge, 1991).

followed by the behavioural revolt, and ultimately ending with the 'world society' approach.[23]

On a separate front, International Relations scholarship has also been somewhat obsessed with the construction of what is perceived to be '*the* tradition of International Relations theory' in the form of a canon of great or 'classic' works. Indeed, the lack of a self-evident set of works indicative of the intellectual history of the discipline was most famously addressed in Martin Wight's controversial 1966 article, "Why Is There No International Theory?"[24] In responding to this question, Wight does not infer that there is no such thing as international theory but rather maintains that a tradition of international theory comparable to that of political theory does not exist. Thus, whereas political theory has been traditionally organised into a canon of classic works, stretching from Plato to the present, international relations does not have a corresponding set of 'classics'. Rather, it is "scattered, unsystematic and...largely repellant and intractable in form" and is to be found in the works of a range of political philosophers, international lawyers, statesmen and diplomats.[25]

In response to this realisation, International Relations has dedicated a great deal of energy to the construction of its own canon of 'classic' works largely poached from

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[23] John A. Vazquez, *The Power of Power Politics: A Critique,* (London: Frances Pinter, 1983).

[24] Martin Wight, "Why Is There No International Theory?", in *Diplomatic Investigations: Essays on the Theory of World Politics,* ed. Herbert Butterfield and Martin Wight, (London: George Allen & Unwin, 1966), pp.17-34.

[25] *ibid.*, p.20.

the field of political theory. Thus, orthodox volumes, such as Howard Williams' *International Relations in Political Theory* include Plato, Aristotle, Augustine, Aquinas, Machiavelli, Hobbes, Rousseau, Kant, Hegel, Clausewitz and Marx.[26] Similarly, Michael Donelan's '1st XI' includes Aristotle, Augustine, Machiavelli, Hobbes, Locke, Montesquieu, Adam Smith, Rousseau, Hegel and Marx, with Kant as the team captain.[27] However, precisely who is 'in' and who is 'out' is entirely a matter of opinion determined in large part by what are perceived to be the specific aims of constructing such a tradition in the first place. Recognising this and a range of other problems inherent in the canonisation of the discipline - though conceding its value as an 'educational device' - Brown, Nardin and Rengger's volume, *International Relations in Political Thought*, provides a far more broadly based set of thinkers that includes, in addition to Grotius, a number of less well-known figures.[28] Indeed, it is interesting to note that despite his stature in both seventeenth and twentieth century international thought, Hugo Grotius has very often been excluded from collections such as these.

However, this 'traditions tradition', as it might be instructively titled, has recently attracted a significant amount of critical attention. In particular, Ian Clark has identified three specific sets of criticisms leveled at the employment of traditions,

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[26] Howard Williams, *International Relations in Political Theory,* (Milton Keynes: Open University Press, 1992).

[27] Michael Donelan, "The Political Theorists and International Theory", in *The Reason of States,* ed. Michael Donelan, (London: Allen & Unwin, 1978), p.75.

[28] Chris Brown, Terry Nardin and Nicholas Rengger (eds.), *International Relations in Political Thought: Texts from the Ancient Greeks to the First World War,* (Cambridge: Cambridge University Press, 2002), p.2-3.

both as categorical devices and in a canonical sense, in International Relations. The first set focuses on the sense in which "the quest for traditions inculcates a fetish for categorisation for its own sake."[29] As such, it is particularly critical of the manner in which the "history of thought becomes subordinate to discovering the pigeon-hole in which any particular writer most appropriately belongs."[30] Indeed, it is a problem which one of the most prominent proponents of the 'traditions approach', Martin Wight, recognised, arguing that;

> In all political and historical studies the purpose of building pigeon-holes is to reassure oneself that the raw material does *not* fit into them. Classification becomes valuable, in humane studies, only at the point where it breaks down.[31]

In a similar vein to Wight, R.J. Vincent warns of what he characterises as the dangers inherent in the "whole enterprise of treating great thinkers like parcels at the post office" that seems to have afflicted the discipline.[32]

The second set of criticisms, to be discussed in some detail in the following chapter, fundamentally claims that the very "construction of traditions of thought is itself an essentially illegitimate scholarly procedure because it makes untenable assumptions

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[29] Clark, p.7.

[30] *ibid.*

[31] Wight, *International Theory,* p.259.

[32] R.J. Vincent, "The Hobbesian Tradition in Twentieth Century International Thought", *Millennium: Journal of International Studies,* Vol.10, (1981), p.96.

about the nature of political language."[33] In particular, historians of ideas such as Quentin Skinner argue that the construction of traditions is based on the false assumption that a set of perennial problems can be identified in political philosophy and create a false sense of coherence both within and between the works of their members.[34] Amongst post-structuralist theorists such as Rob Walker, the designation of a set of writers and/or ideas as a tradition is necessarily accompanied by assumptions pertaining to its origins. Thus, although Walker accepts that all 'stories' in the history of ideas must begins somewhere, he argues that "the point of origin depends on where we think we are now," thereby rendering the construction of traditions particularly susceptible to the charge of anachronism.[35] In addition, Walker also criticises the manner in which the "crudely anachronistic interpretive procedures" of the traditions approach have characterised figures such as Thucydides, Machiavelli, Hobbes and Rousseau "in disguises that make them quite unrecognizable to anyone who examines the textual evidence we have of them."[36] Indeed, Edward Keene makes a similar argument with regard to the peculiar (dis)guise worn by Hugo Grotius in many works of international relations.[37] However, as Walker continues:

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[33] Clark, p.8.

[34] Quentin Skinner, "Meaning and Understanding in the History of Ideas", *History and Theory: Studies in the Philosophy of History*, Vol.VIII, (1969), pp.3-53.

[35] Walker, *Inside/outside*, p.27.

[36] *ibid.*, p.92.

[37] Edward Keene, "The reception of Hugo Grotius in international relations theory", *Grotiana*, Vol.20/21, (1999/2000), pp.135-158.

> That each of these figures is open to sharply differing interpretations has mattered little. The history of political thought turns into an ahistorical repetition in which the struggles of these thinkers to make sense of the historical transformations in which they were caught are erased in favour of assertions about how they all articulate essential truths about the same unchanging and usually tragic reality: the eternal game of relations between states.[38]

Finally, the division of International Relations into theoretical traditions has also been "condemned for encouraging intellectual conservatism and for closing down the agenda."[39] As Walker argues, in response to Robert Keohane's division of approaches to international institutions into two traditions of rationalism and reflectivism, terms such as this and their predecessors, realism and idealism, "have served primarily to close off serious discussion in a manner that has helped to insulate the discipline of international debate ever since."[40] Such categories, he argues, "should be understood as the primary forms in which the basic assumptions governing the study of world politics have been left to congeal, requiring little further explanation."[41] Furthermore, returning once more to the treatment of the 'great thinkers' of international relations he writes that;

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[38] Walker, *Inside/outside*, p.92.

[39] Clark, p.8.

[40] R.B.J. Walker, "History and Structure in the Theory of International Relations", in *International Theory: Critical Investigations*, ed. James Der Derian, (London: Macmillan, 1995), p.315; Robert O. Keohane, "International Institutions: Two Approaches", in *International Theory: Critical Investigations*, ed. James Der Derian, (London: Macmillan, 1995), pp.279-307.

[41] Walker, *ibid.*

> Within their stylized horizons it is possible to honor all those who, for some reason, are revered as contributors to the distilled wisdom of tradition. Thucydides, Marchiavelli [sic], Hobbes, Rousseau and the rest may then commune with more common masters like E.H. Carr, Hans J. Morgenthau and their even more modern disciples.[42]

As will be seen shortly, when transposed to the realm of the 'Grotian tradition', the 'common masters' of Hersch Lauterpacht, Martin Wight and Hedley Bull, amongst others, are seen to 'commune' with the honoured and revered figure of Hugo Grotius, despite bearing little relation to him in reality.

Despite this range of well-founded criticisms, perhaps the most fundamental problem with the 'traditions tradition' of International Relations is the indiscriminate use of the term 'tradition' itself. In particular, in very many instances sets of thinkers and ideas are designated as 'traditions' without any consideration whatsoever of what a tradition actually constitutes. Of those theorists named above only two, Nardin and Wight discuss the concept of tradition in an explicit fashion before applying it to International Relations. On the other hand, David Boucher begins his discussion of the three traditions of political theory in international relations with the correct, though ultimately insufficient assertion that traditions are 'ideal characterisations', while Donelan and Krasner do not consider the term at all.[43]

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[42] *ibid.*

[43] Boucher, p.29.

What is more, in those instances in which 'tradition' is conceptualised in an explicit fashion, little consensus exists as to precisely what is meant by the term. Thus, for Nardin and Mapel, tradition is stringently defined as both "the process of handing down" from generation to generation, and "the thing handed down, the belief or custom transmitted from one generation to another."[44] Alternatively, Wight entertains a vague notion of tradition somewhat akin to a paradigm, according to which sets of ideas are defined by "logical inter-relation" whereby the "acceptance of one unit-idea is likely to entail logically most of the others."[45] Although a range of contending conceptualisations of tradition are discussed in detail in the following chapter, it is important to note at the outset that 'tradition' is a loaded term. Whether employed to indicate a pattern of historical transmission, a vaguely coherent set of ideas or something akin to a Kuhnian paradigm, the term 'tradition' has a certain set of historical connotations attached to it. Thus, as Conal Condren has pointed out, whether intentionally or otherwise, "[t]o designate something a tradition...is to make a putatively historical claim about socialised processes of transmission or communal activity."[46] Thus, as discussed further in Chapter Two, whether intentionally or otherwise the term 'tradition' is underpinned by a particular understanding of the philosophy of history.

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[44] Terry Nardin, "Ethical Traditions in International Affairs", in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel, (Cambridge: Cambridge University Press, 1992), p.6.

[45] Martin Wight, "An anatomy of international thought", *Review of International Studies*, Vol.13, (1987), p.226.

[46] Conal Condren, "Political Theory and the Problem of Anachronism", in *Political Theory: Tradition and Diversity*, ed. Andrew Vincent, (Cambridge: Cambridge University Press, 1997), p.48.

As will be seen as this thesis progresses, many of the problems inherent in the construction of the 'Grotian tradition' of International Relations are identical to those that continue to afflict the discipline more generally. On one level, the 'Grotian tradition' may thus be viewed as just another tradition of International Relations, born of the discipline's on-going fetish for categorisation. In this, many of those criticisms leveled at the construction of traditions in general are particularly applicable to the 'Grotian tradition'. At the same time however, a range of problems also derived from the conceptualisation of the term 'tradition', but specifically associated with the historical figure of Hugo Grotius, have also contributed to contemporary confusion surrounding precisely what the 'Grotian tradition' entails.

The 'Grotius Problem' in International Relations

The 'Grotius problem', as it may be instructively titled, is a multifaceted one. On a fairly superficial, though ultimately central level, it is precipitated by the fact that in International Relations scholarship Hugo Grotius is undoubtedly a writer more cited than read.[47] As Edward Keene quite rightly points out, echoing this sentiment, "[t]here seems to be a suspicion among Grotius scholars, and not necessarily an ill-founded one, that international relations theorists often invoke his name without actually having read his work, apart perhaps from a quick glance at the

[47] Philip Bobbitt, *The Shield of Achilles: War, Peace and the Course of History*, (London: Penguin Books, 2002), p.512.

prolegomena to *De Jure Belli ac Pacis.*"[48] As will become particularly apparent in Chapter Six of this thesis, this phenomenon has certainly exacerbated many of the problems inherent in contemporary characterisations of both Grotius and the 'Grotian tradition'.

To a great extent however, the 'Grotius problem' in International Relations *is* the problem of the 'traditions tradition' outlined above. As mentioned previously, in contemporary scholarship Hugo Grotius is a name increasingly associated, not with the seventeenth century Dutch author of *De Jure Belli ac Pacis,* but with a tradition of thought. What is particularly problematic about this scenario is the extent to which the historical figure of Grotius himself has become obscured both by his categorisation within a number of convergent intellectual traditions and the invention of a range of contending traditions constructed in his name. However, the range of problems associated with both the categorisation of Grotius and his traditions is not confined to International Relations scholarship, but form part of the discipline's inheritance from the cognate fields of political theory and international law.

In the history of political thought, Grotius is most commonly characterised as a member of the natural law tradition.[49] Wedged between the arguably more

[48] Keene, "The reception of Hugo Grotius", p.135.

[49] Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment,* (Cambridge: Cambridge University Press, 1996), p.30; see also, Knud Haakonssen, "Hugo Grotius and the History of Political Thought", in *Grotius, Pufendorf and Modern Natural Law,* ed. Knud Haakonssen, (Aldershot: Ashgate, 1999); Mary Clare Segers, *Hugo Grotius and*

innovative and coherent works of Francisco de Suárez and Samuel Pufendorf respectively, *De Jure Belli ac Pacis* is often erroneously viewed as having ushered forth the modern era of secular natural law scholarship.[50] Simultaneously, Grotius has also been characterised as a member of the just war tradition incorporating the works of Cicero, Grotius' "favourite classical author,"[51] along with Saint Augustine of Hippo, Saint Thomas Aquinas and Francisco de Vitoria, all of whom Grotius holds in high esteem.[52] For theorists such as Richard Tuck and Anthony Pagden, Grotius is a member of the humanist tradition, Tuck referring to him as "the good humanist he was."[53] By pursuing this characterisation however, Tuck sets Grotius' humanism against the more popular, though incorrect, notion that he was a member of the scholastic tradition.[54] In this sense, Grotius is perceived as being "merely a

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secular natural law, (Ann Arbor: University Microfilms, 1977); Richard Tuck, *Natural rights theories: Their origin and development,* (Cambridge: Cambridge University Press, 1979).

[50] The variety of claims pertaining to Grotius' role in the 'secularisation' of the law of nature are discussed in Charles Edwards, *Hugo Grotius The Miracle of Holland: A Study in Political and Legal Thought,* (Chicago: Nelson-Hall, 1981), p.13-14.

[51] David J. Bederman, "Reception of the Classical Tradition in International Law: Grotius' *De Jure Belli ac Pacis", Grotiana,* Vol.16/17, (1995/1996), p.7.

[52] Peter Haggenmacher "On Assessing the Grotian Heritage", in *International Law and the Grotian Heritage,* A commemorative colloquium held at The Hague on 8 April 1983 on the occasion of the fourth centenary of the birth of Hugo Grotius, (The Hague: T.M.C. Asser Instituut, 1985), p. 152ff; Joan D. Tooke, *The Just War in Aquinas and Grotius,* (London: S.P.C.K., 1965); James Turner Johnson, "Grotius' Use of History and Charity in the modern Transformation of the Just War Idea", *Grotiana,* Vol.IV, (1983), p.23.

[53] Richard Tuck, *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant,* (Oxford: Oxford University Press, 1999), p.78; see also Richard Tuck, *Natural rights theories,* p.58; Anthony Pagden, "Introduction", in *The Languages of Political Theory in Early-Modern Europe,* ed. Anthony Pagden, (Cambridge: Cambridge University Press, 1987), p.5.

[54] J. Martin Littlejohn, *The Political Theory of the Schoolmen and Grotius,* (College Springs: Current Press, 1894, p.5. However, Littlejohn does not even attempt to demonstrate Grotius' position

link in the chain of the history of ideas in international law that begins with Vitoria and Suarez"[55] although, as Nicholas Rengger argues, "understandings of the work of Grotius which emphasise that Grotius is following on from the 'tradition' of Vitoria, underrate the extent to which Grotius is distancing himself from the positions of Vitoria by echoing the work of writers opposed to the latter in important respects, such as Suárez, Sepúlveda and Luis Molina."[56] In addition to indicating the extent of Grotius' well documented eclecticism,[57] this multifarious characterisation illustrates the limitations of attempting to 'pigeon-hole' a writer such as this.

As will be seen in Chapters Four and Five of this thesis, in international legal scholarship, Grotius is, implicitly at least, associated with a 'Grotian tradition' that simply exists as a taxonomic device according to which the history of international law is schematised. In this vein, the 'Grotian tradition', as it appears in the works of

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within the scholastic tradition. Rather, the assertion is simply coupled with an immensely detailed exposition of the development of scholasticism prior to Grotius. As such, the supposed scholasticism of his work is never actually established.

[55] Alfred Verdross quoted in Tanaka Tadashi, "Grotius's Method: With Special Reference to Prolegomena" in *A Normative Approach to War: Peace, War and Justice in Hugo Grotius*, ed. Onuma Yasuaki, (Oxford: Clarendon Press, 1993), p.30.

[56] Nicholas Rengger, "A City Which Sustains All Things? Communitarianism and International Society", *Millennium: Journal of International Studies*, Vol.21, No.3, (Winter 1992), p.362-3; Indeed, Tuck claims that "fragments of Grotius' working papers for *De Indis* survive, which show that he was interested in contrasting his own views with those of Vitoria." Tuck, *The Rights of War and Peace*, p.81.

[57] Ulrich Johannes Schneider, "Eclecticism Rediscovered", *Journal of the History of Ideas*, Vol.59, No.1, (January 1998), p.175; J.C.M. Willems, "How to Handle Grotian Ambivalence? A guidance towards some recent guides" *Grotiana*, Vol.6, (1985), p.110.

Lassa Oppenheim and Hersch Lauterpacht, is simply an intermediary category of international thought standing between the dominant positive and natural law traditions.[58] What is particularly curious about this pattern of categorisation is that although he is heralded the 'father of international law' who inspired it, Grotius is not considered a member of the tradition bearing his name.[59] As with the majority of Grotian paternity claims however, this is both highly questionable and equally disputed.[60]

In many ways, Grotius' position in the history of international political thought represents the conglomeration of the views of him promulgated in political theory and international legal scholarship. In large part, this can be attributed to the lack of strictly defined disciplinary demarcations that has marked International Relations scholarship both prior to and since its formal inception in 1919. Indeed, endorsing its porous boundaries, one of the foremost proponents of the 'Grotian tradition' of the twentieth century, Hersch Lauterpacht maintains that;

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[58] Hersch Lauterpacht, "The Grotian Tradition in International Law", *British Yearbook of International Law*, Vol.23, No.1, (1946), pp.1-53; Lassa Oppenheim, *International Law: A Treatise*, Vol.1 – Peace, 3rd ed. Ronald Roxburgh, (London: Longmans, Green & Co., 1920), p.106-7.

[59] Lauterpacht, *ibid.*, p.5.

[60] For examples of Grotius' status as the 'father of international law' see Arthur Nussbaum, *A Concise History of the Law of Nations*, (New York: Macmillan, 1954), p.113; Edward Dumbauld, *The life and legal writings of Hugo Grotius*, (Norman: University of Oklahoma Press, 1969), p.vii. Amongst the most fierce critics of this view is James Brown Scott who favours Francisco de Vitoria for the title. James Brown Scott, *The Spanish Origin of International Law: Francisco de Vitoria and his Law of Nations*, (Oxford: Clarendon Press, 1934).

> ...the relation between political theory and international law is of a more pervading character than is commonly assumed. It is the ultimate results of the theory of the state which are resorted to by international lawyers as the foundation of their systems.[61]

Similarly, when the equally prominent figure in the development of the 'Grotian tradition', Martin Wight, identified a "partition...between philosophically minded international lawyers and internationally minded political philosophers" he described it as an 'unhappy one'.[62] Thus, it comes as no surprise that the majority of contemporary 'Grotian' scholarship resides in areas in which the disciplinary boundaries demarcating international law, international relations and political theory are only vaguely conceived.[63]

As mentioned above however, a number of different 'Grotian' traditions can be identified in International Relations scholarship. Continuing the discipline's schematic trend, in the area of regime theory, Stephen Krasner identifies a 'Grotian tradition', which maintains that "regimes are an unavoidable feature of international life", standing between the structuralist or realist, and modified structuralist or

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[61] Hersch Lauterpacht, "Spinoza and International Law", *British Yearbook of International Law*, Vol.VIII, (1927), p.91.

[62] Martin Wight, *International Theory: The Three Traditions*, ed. Gabriele Wight and Brian Porter, (London: Leicester University Press, 1991), p.3.

[63] See Kenneth Abbott, "International Relations Theory, International Law, and the Regime: Governing Atrocities in International Conflicts", *American Journal of International Law*, Vol.93, No.2, (April 1999), pp.361-379; Anne-Marie Slaughter Burley, Andrew S. Tulumello and Stephan Wood, "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship", *American Journal of International Law*, Vol.92, No.3, (July 1998), pp.205-239.

modified realist traditions.[64] Krasner's Grotian tradition exhibits no explicit connection to Hugo Grotius nor does it seek to explain either why that particular category of regime theories is labeled 'Grotian' or in what sense it ought to be considered a 'tradition'. Similarly, Shah M. Tarzi's "The Role of Norms and Regimes in World Affairs: A Grotian Perspective" fails to even mention Grotius' name or discuss what the 'Grotian tradition' to which he refers entails beyond being an intermediary position between realism and universalism.[65] Alternatively, in the work of Richard Falk, the 'Grotian tradition' is termed the 'Grotian Quest' and is explicitly associated with the works of Grotius himself.[66] In addition, Falk also identifies what he terms a number of 'Grotian moments' throughout the history of political thought, an idea subsequently adopted by B.V.A. Röling. As Röling explains, 'Grotian moments' are times "in which a fundamental change of circumstances created the need for a different world structure and a different international law" and include both Grotius' times and the present.[67] Alternatively, Cornelius F. Murphy's "Grotian vision of world order" is concerned with the works of Grotius and their explicit expression in subsequent writings, particularly those of

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[64] Tony Evans and Peter Wilson, "Regime Theory and the English School of International Relations: A Comparison", *Millennium: Journal of International Studies,* Vol.21, No.2, (Winter 1992), p.331.

[65] Shah M. Tarzi, "The Role of Norms and Regimes in World Affairs: A Grotian Perspective" *International Relations,* Vol.XIV, No.3, (December 1998), p.73.

[66] Richard Falk, *The End of World Orders: Essays on Normative International Relations,* (New York: Holmes & Meier, 1983).

[67] B.V.A. Röling, "Are Grotius' Ideas Obsolete?", in *Hugo Grotius and International Relations,* ed. Hedley Bull, Benedict Kingsbury and Adam Roberts, (Oxford: Clarendon Press, 1990), p.297. See also Dorothy V. Jones, *Toward a Just World: The Critical Years in the Search for International Justice,* (Chicago: University of Chicago Press, 2002), p.213.

the seventeenth and eighteenth centuries.[68] Finally, Karma Nabulsi has recently identified a 'Grotian tradition of war' that is defined by a distinction between combatants and non-combatants in conflict situations.[69] Foremost amongst those 'Grotians' Nabulsi discusses is Francis Leiber whose self-confessed 'deep love of war' demonstrated by his declaration that "Blood is occasionally the rich dew of History", is antithetical to Grotius' own position.[70]

Despite the existence of a range of 'Grotian' traditions in twentieth century scholarship, the 'Grotian tradition' of international relations is most commonly associated with the works of the so-called 'English School', in particular those of its two most prominent members, Martin Wight and Hedley Bull.[71] Indeed, the 'English School' may be considered "the chief champions of the 'Grotian' approach in the modern academy"[72] and for this reason this thesis focuses on its particular variants of the 'Grotian tradition'. The 'Grotian tradition' of Wight's construction is schematic in nature and constitutes the replication of the international legal tradition introduced above. Thus, the Grotian tradition is conceived as an intermediary between the natural and positive legal traditions and is itself classified under the

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[68] Cornelius F. Murphy, "The Grotian Vision of World Order", *American Journal of International Law*, Vol.76, No.3, (July 1982), pp.477-498.

[69] Nabulsi, p.128.

[70] *ibid.*, p.160.

[71] Various accounts of the 'English School', its membership and claims to constitute a 'school' of thought are discussed in Chapter Six.

[72] N.J. Rengger, *International Relations, Political Theory and the Problem of Order: Beyond International Relations Theory?* (London: Routledge, 2000), p.71.

broader banner of rationalist international thought.[73] In the work of Hedley Bull however, the 'Grotian tradition' is explicitly associated with the concept of 'international society', one of the constituent components of Wight's rationalist approach.[74] In subsequent scholarship, this association has manifested itself in a proliferation of claims that the 'Grotian tradition' is simply another name for the 'international society approach' to international relations.[75] Thus, although this affiliation has contributed to Grotius' elevated status in contemporary scholarship, it has also brought with it a great deal of confusion as to precisely what it means to be 'Grotian' and whether or not Grotius was himself a 'Grotian'.

The need to ascertain precisely what is meant by the term 'Grotian' has also been highlighted in more recent scholarship by the increasing number of theorists who, following the re-launch of the 'English School' in 1999,[76] have begun to call themselves 'Grotians'. Indeed, despite entertaining vastly different notions of what it is to be 'Grotian', Robert Jackson has confessed to a 'Grotian bent'[77] while Tim Dunne's intellectual history of the English school explicitly aims "to reveal the radical potentiality of the Grotian or rationalist tradition."[78] This trend has also been

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[73] Wight, *International Theory*, p.14.

[74] Hedley Bull, "The Grotian Conception of International Society", in *Diplomatic Investigations: Essays on the Theory of World Politics*, ed. Herbert Butterfield and Martin Wight, (London: George Allen & Unwin, 1966), pp.51-73.

[75] Jackson, "International Community Beyond the Cold War", p.60.

[76] Barry Buzan, "The English school as a research program: an overview and proposal for reconvening", https://www.ukc.ac.uk/politics/englishschool/buzan.htm.

[77] Jackson, "International Community Beyond the Cold War", p.60.

[78] Dunne, *Inventing International Society*, p.xi.

particularly apparent within scholarship concerned with the normative justification of humanitarian intervention, for example Nicholas Wheeler's *Saving Strangers: Humanitarian Intervention in International Society,* and has witnessed the re-emergence and widespread acceptance of the erroneous claim that Grotius was the father of humanitarian intervention despite the existence of overwhelming evidence to the contrary.[79]

The various incarnations of the 'Grotian tradition' represented in the works mentioned above consequently represent distinctly different sets of ideas that nonetheless share the same name. It is little wonder that Cornelius Roelofsen was driven to write that since its inception, the "cult of Grotius" has, in many spheres, become marked by the "indiscriminate use of the epithet 'Grotian' with terms like 'heritage', 'tradition', or 'concept'."[80] Indeed, in the area of regime theory, the 'Grotian tradition' simply appears as one tradition amongst a great crowd of traditions according to which the discipline is divided and redivided in accordance with present concerns. In particular, by retaining no implicit or explicit connection to Grotius, it stands as a pertinent example of the spiraling propensity of International Relations scholarship to constantly schematise and reconstruct its past. Similarly, what the assertion that Grotius ought to be considered the 'father of

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[79] Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society,* (Oxford: Oxford University Press, 2000), p.45. Evidence against this claim is discussed in Chapter Three.

[80] C.G. Roelofsen, "Grotius and the International Politics of the Seventeenth Century", in *Hugo Grotius and International Relations,* ed. Hedley Bull, Benedict Kingsbury and Adam Roberts, (Oxford: Clarendon Press, 1990), p.96-7.

humanitarian intervention' reveals is the extent to which the historical figure of Hugo Grotius has been obscured in International Relations scholarship, thereby giving rise to a set of questions pertaining to the efficacy of term 'Grotian' itself. Indeed, given the wide range of uses to which it is put, does the term 'Grotian' mean anything at all?

Approaching the 'Grotian tradition'

The failure of many International Relations scholars to adequately distinguish between the ideas of Grotius and the contents of the 'Grotian tradition', however conceived, has been addressed by a number of contemporary theorists. Critically however, almost all such attempts have focused exclusively upon providing a comparison between Grotius' ideas and those of the twentieth century traditions, thereby emphasising the 'Grotian' element of the title. Recognising its rather haphazard conceptualisation, A. Claire Cutler explicitly addresses the relationship between Hugo Grotius and the 'Grotian tradition' in "The 'Grotian tradition' in international relations." Preferring the terms 'Grotian' and 'neo-Grotian', she argues that;

> there is a need to distinguish between the Grotian tradition, evident in the works of Grotius, and the neo-Grotian tradition, evident in the works of Wight, Bull and certain regime analysts. The Grotian tradition posits the existence of a natural law based society, admitting to norms, standards and values of universal application. The neo-Grotian tradition, in contrast has largely rid itself of natural law origins for society or regimes and has

> adopted a positivist stance, more in keeping with realism and the classical tradition.[81]

Thus, in essence, Cutler is proposing a two-fold definition of what is ordinarily understood to be collectively 'Grotian'. However, Cutler's presentation of Grotius' ideas is marred by her reliance on early members of the 'Grotian tradition' (whom she would call neo-Grotians), in particular Hersch Lauterpacht. Thus, rather than providing a direct interpretation of Grotius' *De Jure Belli ac Pacis* as the standard against which to compare later Grotian thought, the conceptualisation of Grotius' work is already imbued with Grotian scholarship.

C.G. Roelofsen also points explicitly to the distinction between Grotius and the Grotian tradition with the following revealing passage:

> When we speak of 'Grotius' do we for instance mean Grotius, the author of *De iure belli ac pacis,* Grotius the politician and diplomat, Grotius the propounder of the 'Batavian'/aristocratic interpretation of the constitution of Holland, Grotius the seventeenth-century figure to whom a certain characteristic 'Grotian' train of thought is to be attributed, or even: Grotius, the intellectual ancestor of a certain 'Grotian' approach to international relations?[82]

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[81] A. Claire Cutler, "The 'Grotian tradition' in international relations", *Review of International Studies,* Vol.7, (1991), p.62.

[82] Cornelius G. Roelofsen, "Grotius and the Development of International Relations Theory: The 'Long Seventeenth Century' and the Elaboration of a European States System", *Grotiana,* Vol.18, (1997), p.97.

Rather than divide Grotius up into his 'political', 'historical' and 'intellectual' forms however, Roelofsen simply distinguishes the multifaceted character of Grotius from a particular notion of what it is to be 'Grotian'.

Almost entirely absent from contemporary literature discussing the 'Grotian tradition' is a detailed analysis of the term 'tradition', both in its generality and as particularly employed by proponents of the 'Grotian tradition'. However, this pattern of scholarship is not limited to the analysis of the 'Grotian tradition' but appears to be more broadly applicable to a range of studies that seek to dissect the original ideas of 'classical' writers from contemporary patterns of thought derived from them. For example, Onora O'Neill has identified a pattern of scholarship associated with the works of Immanuel Kant that is not dissimilar to that pertaining to Grotius and the 'Grotian tradition' described above. Thus, in a similar manner to the 'Grotian' association with 'international society', she writes that;

> Much contemporary work on justice is seen, both by protagonists and by critics, as Kantian. Evidently not all its conclusions accord with Kant's views on obligations, rights or justice; but this in itself is not surprising since its aim is to develop Kant's basic insights, even to improve on his conclusions.[83]

Thus, O'Neill aims to "distinguish Kant's from Kantian work on justice", thereby attempting a similar project to Cutler's attempt to dissect Grotius' ideas from those

[83] Onora O'Neill, *Bounds of Justice,* (Cambridge: Cambridge University Press, 2000), p.65.

of the 'neo-Grotians'.[84] Similarly, although Andrew Hurrell's article, "Kant and the Kantian paradigm in international relations" shows promise of considering its designation as a 'tradition' or 'paradigm' with its claim that "the use and widespread acceptance of the term 'Kantian' makes it legitimate to examine the relationship between Kant and the tradition or paradigm that he is...held to embody," his analysis focuses on reconciling the contending 'statist' and 'cosmopolitan' interpretations of Kant's work within the Kantian tradition.[85]

What the works of Cutler, O'Neill and Hurrell have in common is that none considers the sense in which the 'Grotian' and 'Kantian' traditions have been conceived as 'traditions', but simply compare their contents with the original ideas of Grotius and Kant. Indeed, it is proposed that the apparent failure of International Relations scholars to adequately distinguish between the works of Grotius and the ideas of the 'Grotian tradition' and, following the identification of their conflation, rectify previous anomalies, can in part be attributed to this oversight.

Perhaps the most prominent treatment of the supposed existence and 'traditional' status of the 'Grotian tradition' is that of Benedict Kingsbury and Adam Roberts who include a section entitled 'A Grotian Tradition in International Relations?' in their introduction to *Hugo Grotius and International Relations.*[86] In attempting to

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[84] *ibid.*

[85] Andrew Hurrell, "Kant and the Kantian paradigm in international relations", *Review of International Studies,* Vol.18, (1990), p.184-5.

[86] Kingsbury and Roberts, p.51.

confront its convoluted conceptualisation, Kingsbury and Roberts identify four types of 'Grotian tradition'. In addition to the loosely defined tradition simply indicating support for the concept of 'international society' most commonly utilised in the discipline, they also identify 'textual' and 'contextual' approaches, and a 'Grotian tradition' that employs elements of all three types. The derogation of the wider 'Grotian tradition' into its constituent types is however, counterproductive and conceptually problematic for a number of reasons. Most prominently, by categorising a range of disparate traditions according to four ideal types, this schematisation is unable to distinguish between the 'Grotian' traditions within each type. As such, the problem of imprecision evident in the characterisation of a singular 'Grotian tradition' is simply replicated here on a smaller scale. As a consequence, rather than achieving greater conceptual clarity, the means of achieving such visibility are actually foreclosed. More critically however, Kingsbury and Roberts' chapter provides only a brief discussion of the concept of 'tradition' itself and does not consider the manner in which the proponents of the 'Grotian tradition' have employed the term.

One such writer who has applied the theoretical notion of tradition to the 'Grotian tradition' as conceived in the works of Martin Wight and Hedley Bull is Jens Bartelson.[87] Indeed, in his insightful essay addressing the relationship between the 'Hobbesian' and 'Grotian' traditions, Bartelson comes closest to pin-pointing the source of current confusion regarding the relationship between Grotius and the

[87] Jens Bartelson, "Short circuits: society and tradition in international relations theory", *Review of International Studies,* Vol.22, (1996), pp.339-360.

Grotian tradition.[88] Indeed, although Bartelson's project leads him down an alternative line of inquiry to that being pursued here, his assessment is referred to briefly in Chapter Six.

An outline of the argument

As it stands, the 'Grotian tradition' of International Relations exists as a multifariously conceived entity within which so many contending conceptualisations of what it means to be 'Grotian' reside that the term has been rendered positively obfuscating. What is more, aided by the overwhelming proclivity for the construction of traditions in International Relations scholarship, the historical figure of Hugo Grotius has become both over-categorised and smothered by a range of traditions bearing his name. In light of the abundant confusion surrounding precisely what it means to be 'Grotian' and whether or not Hugo Grotius was one himself, it is not surprising that contemporary theorists have settled for a vague conceptualisation of the 'Grotian tradition' that is associated with the concept of international society.

However, the central argument of this thesis contends that contrary to its contemporary conceptualisation, the 'Grotian tradition' has not, historically speaking, been a tradition of thought about international society. Rather, it has been

[88] Although Tim Dunne provides a discussion of the term 'tradition' itself and its application to Wight's international theory in *Inventing International Society,* p.54-58, he does not consider its reception in the work of Hedley Bull.

concerned with the application of a specific moral scheme, known variously as 'Grotian morality' or 'Grotian ethics' to the general conduct of international relations and, in particular, the regulation of war. As such, this thesis demonstrates that periods of resurgent interest in Grotius' works that have contributed to his longevity in International Relations and ultimately directed the construction of the 'Grotian tradition' can be attributed to the popularity of the moral system presented in his works. Thus the ontological association of the 'Grotian tradition' with the concept of 'international society' in twentieth century scholarship has been, at least in part, facilitated by a range of epistemological problems surrounding the employment of the term 'tradition' in disciplinary histories of International Relations.

In light of these and other issues raised above, the following chapter is consequently concerned with the concept of tradition itself. It seeks to resolve the fundamental question of precisely what it means to designate a set of ideas, thinkers or actions a tradition and, in light of this, how one goes about analysing traditions of thought. In comparing the relative merits of a range of approaches to the concept of tradition, the first part of the chapter relies heavily on Michael Oakeshott's philosophy of history and, in particular, the notion that all forms of history are inventions of present thought. In light of this, it is the manner in which a tradition is actually constructed – that is, the extent to which it constitutes an 'historical' reading of the past as opposed to a 'practical' one devised for 'presentist' purposes – that is its distinguishing feature. Having considered a range of objections to Oakeshott's

approach, the chapter outlines a methodological approach to the analysis of traditions in the form of a modified version of Brian C. Schmidt's 'critical internal discursive history'. Chapter Three is concerned with the works of Hugo Grotius and introduces the three-tiered moral system that has influenced the subsequent development of both Grotian scholarship in general and the 'Grotian tradition' in particular. Chapter Four focuses on the development of 'Grotian' scholarship between the works of Hugo Grotius and the emergence of the most prominent incarnations of the 'Grotian tradition' in the twentieth century. It examines a number of patterns of 'Grotian' thought that can be identified extending from Grotius to Samuel Pufendorf and Jean Barbeyrac, and from Grotius to Christian von Wolff and Emerich de Vattel, noting the most significant developments undertaken by each of these theorists. Following the decline of Grotian scholarship that accompanied the rise to prominence of Vattel's work, the chapter also documents the modest revival of 'Grotian morality' in the works of the American lawyers, James Kent and Henry Wheaton.

In Chapter Five, the full revival of Grotius' works in early twentieth century international legal and political scholarship is discussed. The chapter begins by outlining the 'Grotian' revival that was evident in the works of Cornelius van Vollenhoven and accompanied the establishment of the Grotius Society in 1915. In the second section it outlines the two central debates within which contending approaches to the relationship between law and morality have been conventionally framed, in international relations the so-called 'first great debate' between realism

and idealism, and in international law, that between proponents of legal positivism and natural law. The chapter then concludes by introducing Hersch Lauterpacht's two-fold conceptualisation of the 'Grotian tradition' and the central position of morality within its more developed version. Finally, Chapter Six is concerned with the development of the 'Grotian tradition' in the works of the 'English School' theorists, Martin Wight and Hedley Bull. It outlines the central position of law and morality in Wight's conceptualisation of rationalism and the application of Grotius' upper and lower moralities to the theorisation of international society. However, it is only with the works of Hedley Bull that the final firm association of Grotius with the analytically conceived 'Grotian tradition', rationalism and, by extension, international society occurs. It is also here that a notion of the 'Grotian tradition' divorced from what has previously been understood as the central principles of 'Grotian morality' is achieved, thus completely reconfiguring the fundamental elements of what it means to be 'Grotian'. The thesis then concludes by returning to the sets of questions surrounding the terms 'Grotian' and 'tradition' outlined above and considers what the implications of their conceptualisation might be for both the 'Grotian tradition' in particular and, more generally, for the discipline of International Relations.

II

Tradition

> References to a tradition of international relations theory are by no means innocent. This is not to say they are entirely misleading. They offer us a number of important clues about the historically constituted nature of both the theory and practice of international politics. But – particularly as they are inserted into textbooks, into passing references and obligatory footnotes – accounts of tradition serve to legitimise what counts as proper scholarship.[1]

As a tradition, or set of traditions of international political thought, the construction of the 'Grotian tradition' is, at least in part, determined by the sense in which the term 'tradition' has itself been employed. Indeed, that the 'Grotian tradition' is considered a *tradition*, as opposed to a paradigm or some other form of classification device, is of particular significance to both the manner of its construction and, more importantly, the interpretation of its contents. Although, as discussed in the previous chapter, the mere designation of a set of ideas or thinkers as a tradition imparts upon them a particular set of historical connotations, the precise nature and types of historical claims a given tradition both deliberately and

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[1] R.B.J. Walker, *Inside/outside: International Relations as Political Theory,* (Cambridge: Cambridge University Press, 1993), p.29.

inadvertently makes depends first and foremost on what that particular tradition is, in a definitional sense, thought to entail.

This chapter therefore seeks to explore the theoretical notion of tradition itself. In doing so, it also aims to formulate a methodological approach to the analysis of traditions of thought according to which the construction of the 'Grotian tradition' will be approached in subsequent chapters. It begins by discussing a range of definitions of the term 'tradition' and seeks to resolve the question of whether or not traditions can be justifiably characterised as 'invented' phenomena. It argues that the extent to which traditions are perceived as invented, and the degree to which 'invented' traditions are considered legitimate devices of historical expression, is determined by varying perspectives on the relationship between past and present knowledge. In doing so, the chapter relies heavily on the philosophy of history presented in the works of Michael Oakeshott as he provides not only a theoretical understanding of the relationship between past and present knowledge that is particularly amenable to the analysis of traditions, but one from which the methodological approach to their examination is derived in later in the chapter. Having established that, as instruments of present thought, traditions are inherently invented phenomena, the chapter then seeks to defend Oakeshott's philosophy of history against opposition from the philosophical works of R.G. Collingwood and a range of contextualist methodologies derived from it. In addition, the relative merits of three of the most comprehensive critique of tradition to date, Quentin Skinner's variant of the 'contextualist' approach, Jens Bartelson's 'Foucauldian geneaological

approach', and Brian C. Schmidt's 'critical internal discursive history' are all afforded attention. In doing so, the final section of the chapter demonstrates that Schmidt's approach accords well with Oakeshott's understanding of the relationship between past and present knowledge and concludes that although Schmidt's superficial dismissal of contextual influences in the writing of disciplinary history constitutes a significant flaw, his contribution remains, with corresponding modifications drawn from the works of Skinner, Bartelson and MacIntyre, the most appropriate methodological approach to writing an intellectual history of the 'Grotian tradition' of International Relations.

Tradition as Invention

In a conventional sense, the term 'tradition' simply refers to "an indefinite series of repetitions of an action, which on each occasion is performed on the assumption that it has been performed before."[2] Traditions are consequently both "the process of handing down" from generation to generation, and "the thing handed down, the belief or custom transmitted from one generation to another."[3] Despite a degree of consensus as to what is generally meant by the term 'tradition' however, its substantive constitution remains a matter of some contention. According to Martin

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[2] J.G.A. Pocock, "Time, Institutions and Action: An Essay on Traditions and their Understanding". in *Politics and Experience: Essays Presented to Professor Michael Oakeshott on the Occasion of his Retirement,* ed. Preston King and B.C. Parekh, (Cambridge: Cambridge University Press, 1968), p.212.

[3] Terry Nardin, "Ethical Traditions in International Affairs", in *Traditions of International Ethics,* ed. Terry Nardin and David R. Mapel, (Cambridge: Cambridge University Press, 1992), p.6.

Krygier, a tradition, defined in terms of inheritance, is comprised of three central elements:

> pastness: the contents of every tradition have or are believed by its participants to have originated some considerable time in the past. Second is authoritative presence: though derived from a real or believed-to-be-real past, a traditional practice, doctrine or belief has not, as it were, stayed there. Its traditionality consists in its *present* authority and significance for the lives, thoughts or activities of participants in the tradition. Third, a tradition is not merely the past made present. It must have been, or be thought to have been, passed down over intervening generations, deliberately or otherwise; not merely unearthed from a past discontinuous with the present.[4]

Significantly then, according to this conceptualisation, a tradition need only be *believed* to be "an ancient and continuously practiced inheritance," rather than actually having been practised for some substantial period of time.[5] Indeed, in an earlier article, "Law as Tradition", Krygier writes that "[e]very tradition is composed of elements drawn from the real or imagined past."[6] Similarly, he also argues that, by definition, "[t]raditions depend on real or imagined *continuities* between past and present."[7] However, these elements of imagination and invention are particularly contentious.

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[4] Martin Krygier, "The Traditionality of Statutes", *Ratio Juris,* Vol.1, No.1, (March 1988), p.21.

[5] Nardin, p.7.

[6] Martin Krygier, "Law as Tradition", *Law and Philosophy,* Vol.5, (1986), p.240.

[7] *ibid.*, p.250.

In Eric Hobsbawm's eyes, for instance, the fact that "'[t]raditions' which appear or claim to be old are quite recent in origin and sometimes invented" is not an impediment to their classification as such.[8] On the contrary, Hobsbawm defines 'invented traditions' as sets of "practices, normally governed by overtly or tacitly accepted rules and of a ritual nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past."[9] However, as he continues, "insofar as there is such reference to a historic past, the peculiarity of 'invented' traditions is that the continuity with it is largely factitious."[10] Critically then, in characterising 'invented' traditions as such, Hobsbawm is not suggesting that all traditions are 'invented' but merely that those that are remain defined as 'traditions' despite their invented status. This is particularly apparent with his continual references to traditions and 'invented traditions' as separate entities.[11] Furthermore, also of importance here is the sense in which Hobsbawm uses the term 'invented' to mean 'fabricated'. As will be seen shortly, this understanding of what it is to be 'invented' stands in marked contrast to Michael Oakeshott's contention that as the past is nothing more than "a construction we make for ourselves out of the events which take place before our eyes," all tradition is necessarily 'invented'.[12]

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[8] Eric Hobsbawm, "Introduction: Inventing Traditions", in *The Invention of Tradition,* ed. Eric Hobsbawm and Terence Ranger, (Cambridge: Cambridge University Press, 1983), p.1.

[9] *ibid.*

[10] *ibid.*, p.2.

[11] *ibid.*

[12] Michael Oakeshott, "The Activity of Being an Historian", in *The History of Ideas: An Introduction to Method,* ed. Preston King, (London & Canberra: Croom Helm, 1983), p.80.

In opposition to the 'invented tradition' however, Alasdair MacIntyre defines a 'tradition of enquiry' as being:

> ...more than a coherent movement of thought. It is such a movement in the course of which those engaging in that movement become aware of it and of its direction and in self-aware fashion attempt to engage in its debates and to carry its enquiries forward.[13]

According to this perspective, traditions are not retrospectively constructed 'inventions' but self-conscious patterns of thought. As MacIntyre writes, a tradition necessarily has a "contingent historical starting point in some situation in which some set of established beliefs and belief-presupposing practices, perhaps relatively recently established, perhaps of long-standing, were put into question" and from its establishment, moves through a series of stages of formal institution.[14] As with Krygier's definition, MacIntyre contends that traditions are marked, not only by a pattern of "reference from the present to the past", but are also necessarily constituted by "a certain continuity of directness."[15] Thus, belief in the tradition as a whole, is understood in terms of the "superiority of the formulations of [each stage's] predecessor, and that predecessor in turn is justified by a further reference backwards."[16] However, unlike in Krygier's definition in which traditions are granted authority in accordance with their present status, for MacIntyre the

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[13] Alasdair MacIntyre, *Whose Justice? Which Rationality?*, (London: Duckworth, 1988), p.326.

[14] Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy and Tradition*, (London: Duckworth, 1990), p.116.

[15] *ibid.*

[16] *ibid.*

authority of tradition is derived from the past. At heart, this discrepancy is fundamentally derived from the pivotal question of whether or not traditions are invented. For, if, as will be demonstrated shortly, traditions are in fact invented, then they necessarily derive their authority from the present in which they are invented. Conversely, if traditions are self-conscious patterns of thought, then their authority must be derived from the past in which they exist. With this it becomes clear that while the conceptualisation of 'tradition' pivots about the question of whether or not they can be justifiably described as 'invented', this is dictated by a set of more fundamental questions pertaining to the relationship between the past and the present.

Past and Present in the History of Ideas

As instruments linking the past and the present in the history of ideas, questions regarding the invented nature of traditions and the status they are afforded centre around the more fundamental question of whether we can be said to 'know' the past, or whether all knowledge is present knowledge. At one extreme is the claim that all knowledge is past knowledge. Proponents of this perspective, of which Leo Strauss is perhaps the most prominent, argue that "given that very few of our ideas are *our* ideas, and that even the novelties we devise are pieced together from the readymade components of communal life it becomes difficult to conclude that there

can be a present which is not past."[17] Indeed, Strauss goes so far as to suppose that "[m]ost of our ideas are abbreviations or residues of the thought of other people, of our teachers and of our teachers' teachers; they are abbreviations and residues of the thought of the past."[18] Thus, thinking in the present is constituted by elements of the past, and tradition, if accurately constituted, may represent the legitimate accumulation of past knowledge in the present. At the other extreme is the claim, ascribed to by Michael Oakeshott, that all knowledge is present knowledge. According to this understanding, "if the ideas which we *hypothesize* to belong to the past, are now actually being thought in the present, then the hypothesis must appear baseless, since all we have demonstrable evidence for, is present thinking."[19] According to this perspective traditions, like all forms of thinking, are constructions of the present.

Intimately linked to these contending conceptualisations of past and present knowledge is the very nature of the historical enterprise itself. Although the nuances of its characterisation are wide and varied, in common usage, 'history' is simply understood as constituting both 'the past' and an approach to understanding 'the past'. Understanding the past is generally inferred via pieces of evidence, that is, items that have survived from the past and continue to exist in the present. However, the catalogue of evidence that historians have available to them is

[17] Preston King, "Introduction", in *The History of Ideas: An Introduction to Method,* (London & Canberra: Croom Helm, 1983), p.3.

[18] Leo Strauss, "Political Philosophy and History", in *What is Political Philosophy? And Other Studies,* (Chicago: University of Chicago Press, 1959), p.73.

[19] King, "Introduction", in *The History of Ideas,* p.3.

necessarily incomplete. Pieces of evidence, artifacts and other records of existence have been lost, destroyed or overlooked, leaving us with only a partial, incomplete understanding of the past. The ultimate recovery of past existence is henceforth impossible and, as a result;

> [t]here can be no complete or finished or definitive history. Such history as is written can only be partial, even tentative.[20]

Debates surrounding the question of whether knowledge of the past is possible emanate from this starting point. King writes that "[o]n the one hand, to understand past ideas, we are enjoined to think them through for ourselves, to bring them to life, perhaps to 'enact' or to re-enact them."[21] That is, in attempting to understand past ideas, all we are able to do is construct or re-construct them in the present, using whatever components of the past have survived into the present. Conversely, opponents of this perspective argue that historical understanding, that is, understanding past ideas, "may only be achieved by ceasing to think as we do now."[22] Hence, the historian is implored to locate their thinking within the thought of the period or situation they are investigating. However, proponents of the 'all knowledge is present knowledge' perspective retort that just as time travel, and hence thinking anywhere other than the present, is not possible, it is also not possible to cease thinking in the present and replace present thinking with the

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[20] Preston King, "Thinking Past a Problem", in *The History of Ideas,* p.53.

[21] King, "Introduction", in *The History of Ideas,* p.4.

[22] *ibid.*

thinking of the past. As such, the history of ideas is presented with an apparent paradox, as enunciated by King;

> The problem is, that if history is only to do with the past, and we can only comprehend it in the present, indeed only by making it a part of the present, how can we ever really know it as past – as it was (or 'is')? It would seem that, if we genuinely know history in the present, then it can no longer be past; that if we only apprehend it as present thinking, we cannot seize it as genuine history; that if we know it only by present excogitation, then perhaps it is not really the past that we are excogitating at all.[23]

Despite the pervasiveness of this paradox within the 'history of ideas', a number of writers, including King, attempt to overcome its limitations by either denying the existence of a distinction between past and present, or by blurring its dividing line.

Michael Oakeshott

Regarded by many as "one of the most influential students of the history of ideas in the English-speaking world,"[24] Michael Oakeshott's understanding of history rests on what he also sees as the paradoxical relationship between past and present. This paradox, in Oakeshott's terms, "is not merely that the past must survive into the present in order to become the historical past; [but that] the past must *be* the present

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[23] Preston King, "Thinking Past a Problem", in *Thinking Past a Problem: Essays on the History of Ideas,* (London: Frank Cass, 2000), p.25-6.

[24] King, "Introduction", in *The History of Ideas,* p.4.

before it is historical."[25] More simply, in order to be constructed or reconstructed as the historical past, the past must exist in the present and therefore *be* present and not past. Hence, "the historical past is not past at all...[but] nothing other, nothing more and nothing less, than what the evidence obliges us to believe – a present world of ideas."[26] According to Oakeshott's conceptualisation then, "[w]hat we call 'past events' are...the product of understanding present occurrences as evidence for happenings that have already taken place."[27] These present occurrences may take the general form of survivals, that is, as mentioned earlier, things that have survived from the past to exist in the present. 'The past', therefore, "is a construction we make for ourselves out of the events which take place before our eyes", and as such, the past and the present are 'logical counterparts', 'the past' merely constituting "a certain way of reading 'the present'."[28] Thus history, according to Oakeshott's understanding, is "the continuous assertion of a past which is not past and of a present which is not present."[29] With this it is therefore established that the only possible way of conceiving the past within the past/present paradox is as an invented phenomenon of the present. However, the term 'invented' is not used here to indicate a past that is 'fabricated', as it would be according Hobsbawm's use of the term, but rather implies that the historian looking at the past from the vantage point of the present has a hand in how that past is presented.

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[25] Michael Oakeshott, *Experience and Its Modes,* (Cambridge: Cambridge University Press, 1933/1966), p.109.

[26] *ibid.*

[27] Oakeshott, "The Activity of Being an Historian", p.80.

[28] *ibid.*, p.77.

[29] Oakeshott, *Experience and Its Modes,* p.111.

By extension, it therefore also stands to reason that the most critical characteristic of the past is the manner in which it is invented in present thinking. Recognising this, Oakeshott conceives of three different notions of 'past' as 'remembered', 'practical' or 'historical'. As will become apparent shortly, it is the latter two, the 'practical' and 'historical' pasts that are of greatest relevance to the concept of tradition. The 'remembered past', Oakeshott argues, does not reside within the domain of the central concerns of history as it can simply be equated with personal experience.[30] This form of the past, although similarly existing in the present, is simply a function of personal memory, and is consequently of little use in the practice of historical inquiry. The 'practical past' however, is "composed of artifacts and utterances, alleged to have survived from the past and recognised in terms of their worth to us in our current practical engagement."[31] Further elucidating what is meant by the 'practical past', Oakeshott writes;

> Wherever the past is merely that which preceded the present, that from which the present has grown, wherever the significance of the past lies in the fact that it has been influential in deciding the present and future fortunes of man, whenever the present is sought in the past, and whenever the past is regarded as merely a refuge from the present – the past involved is a practical, and not an historical past.[32]

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[30] *ibid.*, p.102.

[31] Michael Oakeshott, "Present, Future and Past", in *On History and Other Essays,* (Indianapolis: Liberty Fund, 1999), p.35.

[32] Oakeshott, *Experience and Its Modes,* p.103.

The 'practical past' is therefore instrumentally located in the present; that is, it is a tool whose value is determined entirely in terms of its present worth. According to Oakeshott therefore, the role of the historian in addressing the practical past is that of "re-calling, or of re-enacting the past" in order to extrapolate elements of use to the present.[33]

In contrast to the 'practical past' however, the 'historical past' "is a past which has not survived."[34] As mentioned above, due to the incomplete nature of the 'historical record', history can only ever amount to "what the evidence obliges us to believe," rather than "what actually happened."[35] As a result, the 'historical past' is a past that can only be inferred by piecing together fragments of evidence. However, as inference, "is the product of judgement", even 'historical history', "belongs to the historian's present world of experience."[36] The role of the historian in endeavouring to understand the historical past is therefore not "that of recalling, or of re-enacting the past," as this is, due to the reasons explained above, categorically impossible, but of *creating* it "by a process of translation."[37] Thus, like the 'practical past' the 'historical past' is an invention of the present. What distinguishes the 'historical past' from the 'practical past' however, is that it is a "dead past; a past unlike the present", the history of which is concerned with "the past for the sake of the past."[38]

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[33] Oakeshott, "The Activity of Being an Historian", p.92.

[34] Oakeshott, "Present, Future and Past", p.33.

[35] Oakeshott, *Experience and Its Modes,* p.108.

[36] *ibid.*

[37] Oakeshott, "The Activity of Being an Historian", p.92.

[38] Oakeshott, *Experience and Its Modes,* p.106.

History that is concerned exclusively with the 'past for the sake of the past' then, is similarly an invention of the present that constitutes a form of mediation between the past and the present.

As instruments linking the past and the present then, traditions are also inherently invented phenomena that are likewise subject to the practical/historical distinction. However, Oakeshott's substantial discussions of 'tradition' are not fundamentally concerned with traditions of thought, as is the central focus of this thesis, but with traditions of behaviour. As Andrew Vincent writes, for Oakeshott, a tradition is "a 'multi-voiced' entity which does not constitute a creed, set of maxims, rules or propositions."[39] Rather, traditions are more complex means of explaining behaviour in which practical knowledge of a tradition does not exist in isolation but is assimilated into the practices which adherence to a tradition entails.[40] Thus, political education, for example, "is not merely a matter of coming to understand a tradition" of politically motivated behaviour in a detached abstract sense, but entails "learning how to participate in a conversation."[41] For Oakeshott then, political education "begins in the enjoyment of a tradition, in the observation and intimation of the behaviour of our elders."[42] Significantly, traditions of political activity are 'temporary' and it is here that a glimpse of Oakeshott's theoretical understanding of

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[39] Andrew Vincent, "Introduction", in *Political Theory: Tradition and Diversity,* ed. Andrew Vincent, (Cambridge: Cambridge University Press, 1997), p.4.

[40] *ibid.*

[41] Michael Oakeshott, "Political Education", in *Rationalism in Politics and other essays,* (London: Methuen & Co., 1962), p.129.

[42] *ibid.*

tradition can be caught. As 'temporary' phenomena, traditions are always changing and yet, due to their very nature, simultaneously retain an inherent connection to the past from which they are derived. As Oakeshott explains;

> Nothing that ever belonged to it is completely lost; we are always swerving back to recover and make something topical out of even its remotest moments: and nothing for long remains unmodified. Everything is temporary, but nothing is arbitrary. Everything figures by comparison, not with what stands next to it, but with the whole.[43]

In this sense therefore, the central principle of a tradition is 'continuity' whereby "authority is diffused between past, present and future; between the old, the new and what is to come."[44]

In a similar manner to the discussion of tradition included in Oakeshott's essay on political education, 'tradition' also features in his consideration of 'moral activity'. Here, as with political activity, traditions of moral activity are similarly conceived as embedded patterns of behaviour. However, whereas the principle of continuity is emphasised with regard to traditions of political behaviour, in the case of moral activity, 'tradition' is marked more heavily by the principle of coherence. In fact, Oakeshott goes so far as to argue that "moral activity begins with coherence."[45] In

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[43] *ibid.*, p.128.

[44] *ibid.*

[45] Michael Oakeshott, "Rational Conduct", in *Rationalism in Politics and other essays*, (London: Methuen & Co., 1962), p.106.

this instance, knowledge of how to behave is therefore constituted by the coherence of the moral tradition:

> That moral activity should play upon the margins of current moral achievement, appealing from contemporary incoherence to the coherence of a whole moral tradition, is as normal as the activity which merely gyrates around the pivot of contemporary coherence; they are alike exhibitions of a knowledge of how to behave.[46]

What this reveals is that although both continuity and coherence are essential constitutive elements of traditions, the extent of their dominance is largely determined by the specific tradition of behaviour itself. Thus, although Oakeshott provides a sense of how traditions of behaviour function, the theoretical discussion of tradition in his work is limited to an 'applied', rather than abstract theoretical form.[47] For this reason, despite helping to further elucidate elements of their construction, this particular aspect of Oakeshott's work is of limited value in the analysis of traditions of thought.

Two elements of Oakeshott's philosophy of history are however, of particular importance to this endeavour. First, in accordance with the assumption that all thinking is necessarily present thinking, Oakeshott's notion of history as an 'invented' phenomenon provides a useful means of approaching the set of logical

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[46] *ibid.*

[47] See also Michael Oakeshott, "The Importance of the Historical Element in Christianity", in *Religion, Politics and the Moral Life,* ed. Timothy Fuller, (New Haven & London: Yale University Press, 1993).

problems raised by the existence of the 'past/present paradox' in the history of ideas. As mentioned above, the term 'invented' here does not equate to Hobsbawm's designation of 'invented traditions' as fabricated patterns of thought and behaviour. Rather, it refers to an action somewhat akin to creation, not in the sense of a deceitful or fictitious act, but in the very real sense that everything that exists must in some way have been created. Secondly, Oakeshott's conceptualisation of the past in terms of its 'practical' and 'historical' variants constitutes a particularly useful framework according to which the construction of historical traditions might be analysed. As will be demonstrated in the final section of this chapter, this distinction accords well with the specific approach to traditions of International Relations provided by Brian Schmidt and helps to overcome the methodological problems raised by the various manners in which different incarnations of the Grotian tradition have been constructed. However, both Oakeshott's understanding of history and its contingent conceptualisation of the relationship between past and present have been subject to both a barrage of criticisms and radical reformulation by subsequent 'historians of ideas'. The following sections consequently address the objections to Oakeshott's philosophy of history presented, respectively, by proponents of both contextual and post-structuralist approaches to the history of ideas.

R.G. Collingwood

Despite recognising that Oakeshott's work "represents the high-water mark of English thought upon history" with his "brilliant and penetrating account of the aims of historical thought and the character of its object,"[48] Collingwood ultimately sets out "to destroy [Oakeshott's] distinction between past and present."[49] In particular, he argues that it is a 'delusion' to suppose, as Oakeshott has done, that the past "is dead and gone, and in no sense at all living on into the present."[50] This, he explains, is due to the fact that "[t]he historian cannot answer questions about the past unless he has evidence about it" and this "evidence, if he 'has' it, must be something existing here and now in his present world."[51] What this reveals at the outset is Collingwood's fundamental opposition to Oakeshott's notion of history as an 'invented' phenomenon. For, as will be explored further in this section, Collingwood appears to conceive history as something existing 'out there', an understanding of which is provided by evidence existing in the present. However, while Collingwood's argument against Oakeshott's understanding of the past as 'dead and gone' does not, in and of itself, preclude the possibility of a distinction between past and present, the dividing line is breached by coupling this notion with his understanding of the purpose of history and the practice of historical inquiry.

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[48] R.G. Collingwood, *The Idea of History,* ed. Jan Van Der Dussen, (Oxford; Oxford University Press, 1946/1993), p.158-9, 153.

[49] King, "Introduction", in *The History of Ideas,* p.7.

[50] R.G. Collingwood, "The Historical Logic of Question and Answer", in *The History of Ideas: An Introduction to Method,* ed. Preston King, (London & Canberra: Croom Helm, 1983), p.149.

[51] *ibid.,* p.147.

As hinted at above, Collingwood and Oakeshott's contending visions of the purpose of history are ultimately derived from their divergent understandings of the relationship between past and present, a distinction Collingwood aims to eradicate. In addressing Oakeshott's fundamental distinction between past and present that, when considered together, constitutes the past/present paradox, Collingwood argues that "[s]o long as the past and present are outside one another, knowledge of the past is not of much use in the problems of the present."[52] Thus, contrary to Oakeshott's argument that "[h]istory is the past for the sake of the past,"[53] Collingwood blurs the distinction between past and present in order to conceive history as having a primary function in the present. He writes;

> If the function of history was to inform people about the past, where the past was understood as a dead past, it could do very little towards helping them to act; but if its function was to inform them about the present, in so far as the past, its ostensible subject-matter, was incapsulated in the present and constituted a part of it not at once obvious to the untrained eye, then history stood in the closest possible relation to practical life.[54]

Thus, like Oakeshott, Collingwood contends that "all historical thought is the historical interpretation of the present."[55] However, parting ways with Oakeshott, he derives from this the further claim that "for this reason the past concerns the

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[52] Collingwood, "The Historical Logic", p.149.

[53] Oakeshott, *Modes of Experience,* p.106.

[54] Collingwood, "The Historical Logic", p.151-152.

[55] R.G. Collingwood, "The Limits of Historical Knowledge", in *Essays in the Philosophy of History,* ed. William Debbins, (Austin: University of Texas Press, 1965), p.102.

historian only so far as it has led to the present."[56] On the contrary, according to Oakeshott's reasoning, the reason that 'all historical thought is the historical interpretation of the present' is simply because thinking in the present is all that is categorically possible.

Collingwood's reasoning is however, further directed by what he understands to be the purpose of historical inquiry. As indicated above, for Collingwood, history is fundamentally the search for solutions to present problems in past thinking, characterised by the merging of past and present thought. Thus, unlike Oakeshott, who "contended that history is an autonomous activity disengaged from the considerations of practical life,"[57] Collingwood maintains that history serves a practical purpose. This notion of history as standing "in closest possible relation to practical life"[58] directly contradicts Oakeshott's claim that history "is a form of theorising and is therefore "released from considerations of conduct"."[59]

Thus, according to Collingwood, the role of the historian is the re-enactment of what is being studied, rather than its 'invention' in Oakeshott's sense. "Historical knowledge," is therefore the "re-enactment of a past thought encapsulated in a context of present thought,"[60] thus blurring the line between what is past and what

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[56] *ibid.*

[57] David Boucher, "Human Conduct, History and Social Science in the Works of R.G. Collingwood and Michael Oakeshott", *New Literary History,* Vol.24, No.3, (Summer 1993), p.697.

[58] R.G. Collingwood, *An Autobiography,* (Oxford: Clarendon Press, 1978), p.114.

[59] Michael Oakeshott quoted in Boucher, p.703.

[60] Collingwood, *An Autobiography,* p.114.

is present. Again this raises the question of how past and present thought are to be discerned, given that the only thinking that we have demonstrable evidence for is that which occurs in the present. Nonetheless, Collingwood further exacerbates this logical anomaly evident in his thinking with the further claim that history does not entail "knowing what events followed what", but is rather concerned with "getting inside other people's heads, looking at their situation through their eyes."[61] Although it does not seem logically possible to cease looking through one's own eyes, the manner in which 'getting inside other people's heads' is achieved is via what Collingwood terms the 'logic of question and answer'.

The 'logic of question and answer' fundamentally contends that any proposition made in the past may be considered the answer to a particular question characteristic of the time or situation. Thus Collingwood writes:

> Now, the question 'To what question did So-and-so intend this proposition for an answer?' is an historical question, and therefore cannot be settled except by historical methods. When So-and-so wrote in a distant past, it is generally a very difficult one, because writers (at any rate good writers) always write for their contemporaries, and in particular for those who are 'likely to be interested', which means those who are already asking the question to which the answer is being offered; and consequently a writer very seldom explains what the question is that he is trying to answer. Later on, when he has become a 'classic' and his contemporaries are all long dead, the question has been forgotten; especially if the answer he gave was

[61] *ibid.*, p.58.

> generally acknowledged to be the right answer; for in that case people stopped asking the question, and began asking the question that next arose.[62]

However, considering the central precepts of the 'logic of question and answer' together with Collingwood's fusion of past and present, whereby history is the "re-enactment of a past thought encapsulated in a context of present thought," the question of how the historian is to discern their own thoughts from those they are apparently investigating in someone else's head, remains unanswered. Put differently, if it is not possible to discern past and present, then surely all the historian is able to do is suggest *a* question the writer may have been answering and not *the* question. What is more, the question which the historian suggests is embedded in the context of the present and therefore cannot be the logical consequence of 'getting inside' someone else's head.

However, Collingwood's 'logic of question and answer' has provided the basis for an on-going philosophy of history. Inspired by Collingwood, Quentin Skinner, whose work will be discussed in shortly, points out that the "vital implication here is not merely that the classic texts cannot be concerned with our questions and answers, but only with their own", and that "there simply are no perennial problems in philosophy."[63] Rather, "there are only individual answers to individual questions, with as many different answers as there are questions, and as many different

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[62] *ibid.*

[63] Quentin Skinner, "Meaning and Understanding in the History of Ideas", *History and Theory: Studies in the Philosophy of History,* Vol.VIII, (1969), p.50.

questions as there are questioners."[64] However, it is one thing to suggest that 'classic texts cannot be concerned with our questions and answers', and another thing entirely to suppose that 'our questions and answers' can be divorced from the practice of historical inquiry. Indeed, Collingwood and, by extension Skinner's, logic seems to discount that many different questions will be posed by many different questioners, some of whom operate under the guise of the historian.

Of particular pertinence to this discussion however, Collingwood is quite rightly critical of proponents of 'universal history', writing that "[t]heir common characteristic was that they fitted facts together so as to make a pattern in which the same forms tended to recur again and again."[65] Thus, contrary to claims that history may be constituted by elements of universality, he argues that "[a]ll history is the history of something, something definite and particular" and consequently, that "the history of everything is the history of nothing."[66]

Finally, and of particular importance to the notion of 'tradition' developed in Collingwood's work is his understanding of history and the role of the historian as embedded in a notion of progress in the social and intellectual evolution of humankind. "Man," he argues, "has been defined as an animal capable of profiting by the experience of others."[67] For example, the mathematics of the ancient Greeks

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[64] *ibid.*

[65] R.G. Collingwood, "The Philosophy of History", in *Essays in the Philosophy of History*, ed. William Debbins, (Austin: University of Texas Press, 1965), p.130.

[66] *ibid.*

[67] Collingwood, *The Idea of History*, p.226.

is not "the dead past of a mathematical thought once entertained by persons whose names and dates we can give," but is mathematics that we can understand in the present as the foundations of contemporary mathematics.[68] The historical process, according to Collingwood, is therefore the means according to which progress is achieved "by the retention in the mind, at one phase, of what was achieved in the preceding phase."[69] In this manner then, 'scientific history', as Collingwood terms it, represents the accumulation of past ideas now encapsulated in the present and implies that interpretations of the present are always superior to those of the past.

Thus, to recap the findings of the preceding discussion, traditions exist as devices that both invent and communicate the history of ideas. In doing so, they constitute a means of connecting the past and the present, although the nature of this connection and the motivations for pursuing it vary. Fundamentally, the question of whether we can be said to 'know' the past, is central to the contending conceptualisations of both past and present, and the notion of 'tradition' itself. Assuming with Oakeshott however, that the past is an invention of the present, traditions simply constitute a means of constructing the past. Furthermore, despite the efforts of those opposed to the very notion of the 'invented tradition', the concept of tradition remains trapped in the past/present paradox and is consequently best viewed as an invented phenomenon. Thus, although MacIntyre's definition of tradition as a self-conscious pattern of thought appears on the surface to exist in the past, it too is a function of present thinking and is, as a result, similarly 'invented'. In light of this, what is

[68] *ibid.*

[69] *ibid.*, p.333.

critical to the analysis of traditions is the precise manner in which they are invented for, as John G. Gunnell makes clear, "it is one thing to engage in a conversation with the past and quite another thing to stage a conversation with the past."[70] With these issues in mind, the remaining sections of this chapter are concerned with a range of methodological approaches to the analysis of traditions, namely that 'contextualist', 'genealogical' and 'critical internal discursive' approaches.

Contextualism

Perhaps the most interesting criticisms of the broadly conceived 'traditions approach' have resonated from a number of contemporary historians of ideas such as Quentin Skinner, J.G.A. Pocock, James Tully and Richard Tuck. Although none of these writers are explicitly concerned with the traditions of International Relations *per se*, Tuck coming closest with his account of traditions of war and peace,[71] their critique of traditions as instruments of historical inquiry remain applicable to the discipline. In this vein, Duncan Bell has recently advocated the application of contextualist methodologies to the disciplinary history of International Relations.[72] In more general terms however, contextualist approaches "stand as both a powerful critique of the invention of traditions and an argument for

[70] John G. Gunnell, "The Myth of the Tradition", in *The History of Ideas,* p.252.

[71] Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant,* (Oxford: Oxford University Press, 1999).

[72] Duncan S.A. Bell, "International relations: the dawn of an historiographical turn?", *British Journal of Politics and International Relations,* Vol.3, No.1, (April 2001), pp.115-126; "Political Theory and the functions of intellectual history: a response to Emmanuel Navon" *Review of International Studies,* Vol.29, (2003), pp.151-160

the reconstruction of more genuinely historical traditions."[73] As such, Skinner's work in particular points to a range of methodological implications both for the construction and analysis of traditions of thought. However, as will be discussed in this section, Skinner's approach to achieving 'more genuinely historical traditions' is susceptible to a range of criticisms both from proponents of the opposing 'textualist' tradition, and more fundamentally, from those who question the very conceptual foundations upon which it is built. In particular, in accordance with Oakeshott's conceptualisation of history, the ability of the historian to escape the present by reconstructing the past context in which a text was composed, proposed by Skinner, is brought into serious question.

Textualism, the traditional opponent of contextualist approaches, fundamentally contends that all that is required to understand a text is the reading and re-reading of the text itself. Contextualism, on the other hand, "is a contemporary methodological claim that valid history is only secured via the approximately complete reconstruction of 'the context'" in which it was written.[74] Like textualism, contextualism is not a methodology in and of itself, but rather a pedagogic device used to classify a set of approaches to historical inquiry that privilege, to varying extents, the place of context in the interpretation of historical texts. As John Patrick Diggins states, clarifying the contextualist position, "[t]he ultimate aim of the contextualist is to establish what the author of a work had in mind by its production, and in this exercise the text itself is not a self-sufficient resource for understanding

[73] Dunne, "Mythology or methodology?", p.310.

[74] King, "Introduction", in *Thinking Past a Problem,* p.5.

its author's intentions."[75] Thus, the contextualist approach, "insists that it is the *context* "of religious, political and economic factors" which determine the meaning of any given text, and so must provide "the ultimate framework" for any attempt to understand it."[76] Despite holding this fundamental idea in common however, a range of different methodological approaches exist within the broad remit of 'contextualism'.

At a fundamental level, textualism and contextualism are derived from differing notions of the relationship between past and present knowledge and its implications for the practice of historical inquiry. As John Dunn writes, textualism "views the historical character of the texts with massive indifference, treating them, with varying degrees of attention and patience, simply as repositories of potential intellectual stimulation for a contemporary reader, and permitting themselves to respond, accordingly, just as the fancy takes them."[77] Thus, the 'meaning' of the text is defined entirely in terms of its present interpretation. Contextualism, on the other hand, is inspired by claims that "we can make no assumptions that are valid for the past, that the past is marked by chronic alterity, [and] that our chief obligation, in the pursuit of what Oakeshott called 'the historical past', is to escape the present."[78] As established earlier in this chapter however, it is categorically

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[75] John Patrick Diggins, "The Oyster and the Pearl: The Problem of Contextualism in Intellectual History", *History and Theory: Studies in the Philosophy of History,* Vol.XXIII, (1984), p.152.

[76] Skinner, "Meaning and Understanding in the History of Ideas", p.3.

[77] John Dunn, "The History of Political Theory", in *The History of Political Theory and other essays,* (Cambridge: Cambridge University Press, 1996), p.19.

[78] King, "Introduction", in *Thinking Past a Problem,* p.5-6.

impossible to think anywhere other than the present and, as such, this reasoning amounts to the perversion of Oakeshott's philosophy of history. Indeed, as King explains, "attempts to remove ourselves from the present to enter the past [are] self-defeating," and hence, the only place in which the past can be understood is in the present.[79] Thus, the philosophical underpinnings of contextualism pose a serious methodological dilemma.

Although he argues that contextualism is not "a sufficient or even appropriate means of achieving a proper understanding of any given literary or philosophical work,"[80] Quentin Skinner stands as perhaps the most prominent contextualist theorist of contemporary scholarship. Derived explicitly from the speech-act theories of Austin, Searle and Grice, Skinner's 'linguistic contextualism', as it is sometimes labeled,[81] is founded on the claim that "every serious utterance has some particular illocutionary force co-ordinate with its ordinary meaning as a locution."[82] As Tully explains, in addition to "putting forward words, sentences, arguments, theories and so on with a certain 'locutionary' or 'propositional' meaning...the author will be *doing something in* speaking or writing the words, sentences,

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[79] *ibid.*, p.5.

[80] Skinner, "Meaning and Understanding", p.3-4.

[81] Mark Bevir even goes further than simply identifying a 'linguistic' variant of the contextualist approach, distinguishing between the 'hard linguistic contextualism' of J.G.A. Pocock, and the 'soft linguistic contextualism' of Skinner. See Mark Bevir, "The Errors of Linguistic Contextualism", *History and Theory: Studies in the Philosophy of History,* Vol.31, (1992), p.276.

[82] Quentin Skinner, "Conventions and the Understanding of Speech Acts" in *The History of Ideas: An Introduction to Method,* ed. Preston King, (London & Canberra: Croom Helm, 1983), p.xiii.

arguments and so on: he or she will be doing so with a point or an intended force."[83] This act of 'doing something in speaking or writing' is what is referred to as the illocutionary force of a speech act. According to this reasoning therefore, understanding a text requires understanding both its locutionary and illocutionary forces.

The illocutionary force is henceforth determined by examining the linguistic context in which a text was written. By employing a contextualist approach that takes both locutionary and illocutionary forces into consideration, Skinner argues that "[w]e can begin to see not merely what arguments [authors] were presenting, but also what questions they were addressing and trying to answer, and how far they were accepting and endorsing, or questioning and repudiating, or perhaps even polemically ignoring, the prevailing assumptions and conventions of political debate."[84] These are all elements of understanding that cannot be obtained by merely reading a text in isolation from its context.

Skinner's appropriation of speech-act theory in this manner consequently attempts to "resurrect hermeneutical claims that are rooted in the work of individuals such as R.G. Collingwood."[85] Thus, Collingwood's aim of "getting inside other people's

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[83] James Tully, "The pen is a mighty sword: Quentin Skinner's analysis of politics", in *Meaning and Context: Quentin Skinner and his Critics,* ed. James Tully, (Cambridge: Polity Press, 1988), p.8.

[84] Quentin Skinner, *The Foundations of Modern Political Thought, Volume One: The Renaissance,* (Cambridge: Cambridge University Press, 1978), p.xiii.

[85] John G. Gunnell, "Interpretation and the History of Political Theory: Apology and Epistemology", *American Political Science Review,* Vol.70, No.2, (1982), p.321.

heads, looking at their situation through their eyes,"[86] as proposed by the 'logic of question and answer,' is facilitated in Skinner's work by speech act theory. In this vein, speech act theory is the means according to which Skinner attempts to ascertain what questions the answers provided by historical texts were addressing.

In conceiving historical understanding as constituted by locutionary and illocutionary forces, understood in terms of prevailing linguistic conventions, Skinner both criticises and endorses the notion of tradition. As such, he presents three explicit arguments against tradition. First, and as mentioned previously, citing the work of R.G. Collingwood, he argues that "there simply are no perennial problems in philosophy: there are only individual answers to individual questions, and as many different questions as they are questioners."[87] Thus, the notion of continuity within the concept of tradition is, in Skinner's view, prone to anachronism, that is, "falsely asserting an identity or continuity with the past."[88] Deriving this argument from the central precepts of speech-act theory, Skinner asserts that political language is embedded in the context of its time, hence eliminating the possibility of the transhistorical languages and timeless ideas that constitute the continuity of traditions. Skinner's second and related complaint about the use of traditions in the history of ideas is what he terms the 'mythology of coherence'. He argues that "[t]his procedure gives the thought of various classic writers a coherence and an air generally of a closed system, which they may never

[86] Collingwood, *An Autobiography,* p.58.

[87] Skinner, "Meaning and Understanding", p.50.

[88] King, "Introduction", in *Thinking Past a Problem,* p.5.

have attained or even been meant to attain."[89] Finally, Skinner also attacks the 'myth of doctrines', precipitated by "the danger of converting some scattered or quite incidental remarks by a classic theorist into his "doctrine" on one of the mandatory themes."[90] Considered together, these three problems invite the possibility of "crediting a writer with a meaning he could not have intended to convey, since that meaning was not available to him."[91]

However, Skinner's approach has been subject to stringent criticism from both within and outside the broadly conceived realm of contextualist scholarship. Attacking his denial of the existence of 'perennial problems', for example, Joseph Femia argues that "[s]urely *some* problems are perennial, in the sense of always underlying thought about certain ranges of concrete particulars," maintaining that "such problems *do* tend to recur as explicit focuses of concern."[92] Peter Janssen however, defends Skinner's position against Femia's criticisms, arguing that his argument is based on one controversial passage of Skinner's work. According to Janssen's interpretation, Skinner's concern is simply to "expose the absurdities of a perennial-issues approach," rather than to deny the possibility of any similarity between the ideas of different peoples and ages.[93] However, it is one thing to argue

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[89] Skinner, "Meaning and Understanding", p.17.

[90] *ibid.*, p.7.

[91] *ibid.*, p.9.

[92] Joseph V. Femia, "An historicist critique of 'revisionist' methods for studying the history of ideas", in *Meaning and Context: Quentin Skinner and his Critics,* ed. James Tully, (Cambridge: Polity Press, 1988), p.164.

[93] Peter L. Janssen, "Political Thought as Traditionary Action: The Critical Response to Skinner and Pocock", *History and Theory: Studies in the Philosophy of History,* Vol.XXIV, (1985), p.120.

against the assumption that all problems are perennial in nature, and another entirely to argue that "there simply are *no* perennial problems in philosophy", as Skinner has done.

Alternatively, writers such as Gad Prudovsky argue that "historical figures need not be reconstructed solely in terms of the social and linguistic conventions of their time and place."[94] Similarly, Femia criticises Skinner's understanding of the history of political thought as a "series of disconnected intellectual events," contending that "[i]f all historical events are *sui generis*, then we cannot write history; only pile up documents."[95] However, the danger inherent in attempting to assert some sort of false coherence or continuity of ideas remains. In light of such arguments therefore, Prudovsky makes the sensible point that "[t]he interpreter should learn when it is appropriate to search for coherence and when it is not."[96] Unfortunately however, he does not provide any suggestion of what these appropriate circumstances might entail.

More seriously, John Gunnell maintains that by pursuing this line of argument, Skinner risks undermining "the kind of integrity that was provided by the idea of the tradition" promulgated in this context by proponents of *the* grand tradition of political thought and "the sense of relevance gained by the belief that it was

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[94] Gad Prudovsky, "Can We Ascribe to Past Thinkers Concepts They Had No Linguistic Means to Express?", *History and Theory: Studies in the Philosophy of History,* Vol.36, (1997), p.15.

[95] Femia, p.168.

[96] Prudovsky, p.23.

explaining our modern political condition."[97] Skinner however, retorts that his methodology actually amounts to a reformulation of the notion of tradition. Indeed, far from arguing for the eradication of traditions altogether, Skinner merely argues for a more historical approach to their interpretation and the interpretation of those texts and actions contained within them:

> I am suggesting that what is needed, in order to be able to carry the argument beyond this rather unsatisfactory point, is not merely to indicate the traditions of discourse to which a given writer may be appealing, but also to ask what he may be *doing* when he appeals to the language of those particular traditions. Since many different things can always be done by different writers with a given 'language', the focus ought not, I think, to be on the language or the traditions in themselves, but rather on the range of things which can in principle be done with them (and to them) at any given time.[98]

By situating historical interpretation within the linguistic conventions of the time therefore, Skinner is appealing to an historically constituted notion of tradition. Mark Bevir, amongst others however, contends that by deriving a notion of intentions from the conventions of the time, Skinner's methodology is unable to cope with unconventional or highly creative expressions of intention.[99] Thus, it is susceptible to its own criticisms of traditions enforcing the myths of doctrine and coherence. A number of writers have also questioned Skinner's assumption that the

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[97] Gunnell, "Interpretation and the History of Political Theory", p.326.

[98] Quentin Skinner, "Some problems in the analysis of political thought and action", in *Meaning and Context: Quentin Skinner and his Critics*, ed. James Tully, (Cambridge: Polity Press, 1988), p.107.

[99] Bevir, "The Errors of Linguistic Contextualism", p.289.

intentions of an author in composing a text are recoverable. Following Hans-Georg Gadamer, such critics argue that Skinner "presents the historian with a hopeless task of identifying secret authorial intentions."[100] According to Rogers however, this type of criticism "disregards the distinction between motives, often secret, and intentions, which are in the case of speech acts always public."[101]

Perhaps the most significant criticism of Skinner's work is encapsulated in the further contention that he does not seem to apply his methodology to himself as an interpreter. More specifically, Skinner's instrumental endorsement of hermeneutic principles of interpretation is highly inconsistent and, by extension, contradictory. His understanding of the relationship between text and context, or between the author and the situation in which the author wrote, utilises the notion of the hermeneutic circle. In accordance with philosophical hermeneutics therefore, it is maintained that the part, constituted by the text, cannot be understood in isolation from the whole, the context. However, Skinner does not extend this hermeneutic circle to include the interpreter of the text. Indeed, as Keane argues, it is "[n]ot only those whose utterances are to be interpreted, but interpreters themselves [who] are always situated within a field of historically bound conventions and practices mediated by ordinary language."[102] By ignoring the context of the interpreter from the process of interpretation therefore, Skinner assumes that the interpreter is

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[100] Ben Rogers, "Review Article: Philosophy for Historians: The Methodological Writings of Quentin Skinner", *History,* Vol.75, No.2, (1990), p.269.

[101] *ibid.*

[102] John Keane, "More theses on the philosophy of history", in *Meaning and Context: Quentin Skinner and his Critics,* (Cambridge: Polity Press, 1998), p.209.

somehow a detached observer of the past. However, Skinner has recently addressed this criticism of his work, writing that;

> We are of course embedded in practices and constrained by them. But those practices owe their dominance in part to the power of our normative language to hold them in place, and it is always open to us to employ the resources of our language to undermine as well as to underpin those practices. We may be freer than we sometimes suppose.[103]

However, if historical texts are thought to exist exclusively in the present, then Skinner's archangels of historical purity are nothing more than a fantasy. By extension, attempts to overcome the problem of anachronism in historical interpretation is also impossible and, as King has argued, may even result in an equally alarming prospect, particularism.[104]

In light of these and other criticisms, a number of historians originally associated with Skinner's approach have moved to distance themselves from his work in more recent scholarship. In particular, John Dunn, once sympathetic to a broadly understood Skinnerian methodology, admits to a significant shift in his own approach, writing that "[a]fter more than thirty years of reflect[ion]" some of the 'weightiest judgements' he had previously made about the nature of historical

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[103] Quentin Skinner, "Introduction: Seeing things their way", in *Visions of Politics,* Vol.I: Regarding Method, (Cambridge: Cambridge University Press, 2002), p.7.

[104] King, "Introduction", in *Thinking Past a Problem,* p.5.

enquiry "seem...less often clear and negative than I used intuitively to believe."[105] As such, he now adheres to a more tempered contextualist approach that recognises both that the "idea of a context of authorship has proved, on closer consideration, remarkably elusive" and that "not *all* historical studies will tell us something."[106] In doing so, Dunn reverts to a more commonsense approach explained by the assertion that "[i]t is not a necessary truth that a lengthy text can be best understood by reading it the right way up. But it remains an eminently sound judgement."[107]

Similarly, Richard Tuck, whilst also remaining broadly contextualist in orientation, focuses on the historical and intellectual contexts in which texts were composed, interpreting Grotius' *De Jure Praedae* in terms of the case of the Dutch East India Company for which it was written and the intellectual tradition of humanist scholarship in which Grotius was educated.[108] In doing so, in a typically contextualist manner, Tuck explicitly aims to "depict as far as possible the character of the actual life which these theorists were leading, and the specific political questions which engaged their attention."[109] However, like Dunn, Tuck also directly refutes Skinner's approach on a number of critical points. In particular, he writes that historical scholarship "should also be a contribution to our understanding of

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[105] John Dunn, "Introduction", in *The History of Political Theory and other essays,* (Cambridge: Cambridge University Press, 1996), p.2.

[106] John Dunn, "The History of Political Theory", in *The History of Political Theory and other essays,* (Cambridge: Cambridge University Press, 1996), p.23.

[107] *ibid.*, p.26.

[108] Tuck, *The Rights of War and Peace,* pp.78-108.

[109] Richard Tuck, *Philosophy and Government 1572-1651,* (Cambridge: Cambridge University Press, 1993), p.xi.

how people might cope with broadly similar issues in our own time," adding that the "point of studying the seventeenth century...is that many of the conflicts which marked its politics are also found in some form in the late twentieth century; and, indeed, the better our historical sense of what those conflicts were, the more often they seem to resemble modern ones."[110] With this, Tuck seems to suggest, contra Skinner that some problems may, in fact, be perennial.

Despite the range of criticisms launched at Skinner's work and the derivative methodologies they have precipitated, alternative forms of contextualism exist, the most prominent of which is evident in the work of J.G.A. Pocock. Central to Pocock's philosophy of history is the notion of the linguistic paradigm derived from Thomas Kuhn's understanding of the manner in which paradigms operate in scientific research. Although Kuhn offers more than twenty different definitions of the term 'paradigm' in his seminal work, *The Structure of Scientific Revolutions*, it has largely been applied in the dualistic sense that follows:

> On the one hand, it stands for the entire constellation of beliefs, values, techniques, and so on shared by the members of a given [research] community. On the other, it denotes one sort of element in that constellation, the concrete puzzle-solutions which, employed as models or examples, can replace explicit rules as a basis for the solution of the remaining puzzles of normal science.[111]

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[110] *ibid.*, p.xi-xii.

[111] Thomas Kuhn, *The Structure of Scientific Revolutions*, (Chicago: University of Chicago Press, 1962), p.175.

Paradigms are, more simply, "accepted concrete examples of scientific achievement, actual problem-solutions which scientists study with care and upon which they model their own work."[112] As such, they constitute the epistemological parameters that demarcate any given field of inquiry, determining, for example, the appropriate experimental techniques to be followed in certain standard scientific procedures.

Significantly, Pocock maintains that Kuhn's notion of the paradigm can be applied to "any field of intellectual history" and thereby sets about applying it to the history of political thought.[113] In this sense, as with the notion of context discussed above, the paradigms within which the theorist writes are assumed to be both linguistic and political. However, recognising that the "political community is not like the scientific community" and, as a form of rhetoric, political language is not, like scientific language, the "language of a single disciplined mode of intellectual inquiry", Pocock modifies Kuhn's paradigm by redefining its central authority structure.[114] He explains that within a Kuhnian scientific paradigm, particular solutions are provided for particular problems in accordance with an accepted understanding of "authority within the scientific community."[115] For example, it is accepted that certain problems in the physical sciences can be solved by reference

[112] Thomas Kuhn quoted in J.G.A. Pocock, "Languages and Their Implications: The Transformation of the Study of Political Thought" in *Politics, Language and Time: Essays on Political Thought and History,* (Chicago: University of Chicago Press, 1989), p.14, n.6.

[113] Pocock, *ibid.*, p.15.

[114] *ibid.*, p.17 & 18.

[115] *ibid.*, p.18.

to a set of currently uncontested laws of physics. However, as speech paradigms operate in "several simultaneous contexts, performing several simultaneous functions" they do not provide particular answers to particular problems but rather exist as 'multivalent' entities with varying elements of authority.[116] Thus, in order to conceive paradigms of political thought, Pocock removes the single rigid authority structure of the scientific paradigm that dictates, for example, that all physical inquiry must proceed according to the fundamental laws of physics. What this modification fundamentally allows then, is the possibility that multiple meanings may be derived from the interpretation of a single utterance or text within a single paradigm.

In part, what Pocock has achieved by replacing the concept of context with the notion of the paradigm, is a far more complex and nuanced understanding of what 'context' itself entails. He writes that "[o]nce history is seen in linguistic depth such as this, the paradigms with which the author operates take precedence over questions of his "intention" or the "illocutionary force" of his utterance, for only after we have understood what means he had of saying anything can we understand what he meant to say, what he succeeded in saying, what he was taken to have said, or what effects his utterance had in modifying or transforming the existing paradigm structures."[117] In particular, he recognises that "any text or simpler utterance in a sophisticated political discourse is by its nature polyvalent; it consists in the employment of a texture of languages capable of saying different things and

[116] *ibid.*

[117] *ibid.*, p.25.

of favouring different ways of saying things."[118] What is more, not only are "[e]ach of the distinguishable idioms of which a text may be compounded...a context in its own right... [but] each language context betokens a political, social or historical context within which it is itself situated."[119]

In so arguing, Pocock addresses in part King's criticism of the distinction made between text and context, although, like Skinner, he is similarly unable to resolve its central point of contention. As King argues;

> The trouble is that it is logically and physically impossible for any individual endlessly to contextualize the context of the context...of the context. The problem here is that of Fido's tail: to chase and never to catch. The construction of a context is never conclusive, nor logically sounder, merely by virtue of it being a context. A 'context' is nothing more than a text which, by virtue of being last in place, has not yet been and cannot itself yet be contextualized.[120]

Contextualism is consequently faced with a logical dilemma. Either it takes context seriously and incorporates the context of the interpreter and the problematic context of the context, or it employs an instrumental notion of hermeneutic interpretation as evident in both the contextualist approaches of Skinner and Pocock. These

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[118] J.G.A. Pocock, "Introduction: The state of the art", in *Virtue, Commerce and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century,* (Cambridge: Cambridge University Press, 1985), p.9.

[119] *ibid.,* p.12.

[120] Preston King, "Historical Contextualism: The New Historicism?" in *Thinking Past a Problem,* p.187.

criticisms are particularly drawn upon by a range of poststructuralist theorists, including Jens Bartelson whose work is discussed in the following section. Such criticisms aside however, the contextualist approaches offered by Skinner, Pocock and others do provide a number of useful ideas that will be returned to shortly. Although when taken to its logical extreme the assertion that texts ought to be interpreted in light of their historical, political and linguistic contexts is highly problematic, in a more tempered form whereby 'context' does not prevail over 'text' and the interpreter is conceived as an interested participant in this process of interpretation, seems a relatively sensible one.

Foucauldian Genealogy

At first sight, it might seem that dedicating a section to the work of Jens Bartelson, a Foucauldian theorist, and not Michel Foucault himself, is slightly absurd; a case of overlooking the master in favour of the apprentice. However, there are three good reasons for doing so. First is the fact that by focusing on Bartelson we get 'two for the price of one'. Not only do we get an explication of Foucault's most important ideas but they are presented as read through a particular lens of International Relations scholarship. Secondly, as Bartelson's work directly addresses Skinner's contextualist approach to the history of ideas, it contributes to the ongoing debate regarding the interpretation of historical texts with which this chapter is in part concerned. Finally, and less obviously at this stage, the introduction of Bartelson's work here foregrounds his return in Chapter Six in

which his analysis of the conceptualisation of tradition employed in the works of Martin Wight and Hedley Bull with regard to the Grotian tradition is considered.

Employing a Foucauldian genealogical approach, Jens Bartelson's *A Genealogy of Sovereignty* raises a further set of questions to be leveled at both 'presentist' and 'finalist' histories.[121] Explaining the differences between finalist and presentist histories, he writes that "a finalist history is a history of the past in terms of an imagined future," whereas "a presentist history is a history of the past in terms of the present."[122] Thus, while a "finalist history treats the present as a projection of the past, by projecting a version of that past onto the present...a presentist history regards the past as a projection of the present, by projecting a version of the present onto the past."[123] In a broad sense, 'finalist' and 'presentist' histories consequently represent an extreme interpretation of the opposition 'all knowledge is present knowledge' and 'all knowledge is past knowledge' positions introduced earlier. Bartelson's stated aim is therefore to overcome the "twin pitfalls of finalism and presentism," and in doing so, provide a critical appraisal of Quentin Skinner's contextualist approach outlined in the previous section.[124]

Rather than endorse Skinner's attempt to overcome the limitations of 'presentist' history however, Bartelson also attacks the hermeneutic logic of his approach. In

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[121] Jens Bartelson, *A Genealogy of Sovereignty,* (Cambridge: Cambridge University Press, 1995), p.54.

[122] *ibid.*, p.55.

[123] *ibid.*

[124] *ibid.*, p.58.

particular, he is especially concerned with Skinner's claims to suprahistoricity as also discussed in the previous section. Bartelson especially seizes upon Skinner's claim that:

> I have merely observed that the question of what it may be rational to hold true can vary with the totality of one's beliefs. I have never put forward the reckless and completely different thesis that truth itself can vary in the same way.[125]

As Bartelson reasons however, claims that the history Skinner is writing is true can only be ascertained 'rationally' in the present rather than the past where Skinner claims to be thinking. Thus, in claiming a suprahistorical vantage point, Skinner runs into the same circular trouble as Fido and the 'context of the contextualiser' within the hermeneutic circle discussed above. Highlighting the fundamental inconsistency of his approach then, Bartelson writes that "at the same time as Skinner wants to suspend the concept of truth in favour of historicised rationality in the accounts of past beliefs, he clings to much less mutable a standard when it comes to justifying his own beliefs, and consequently, to side-stepping the hermeneutic circle in order to comment on beliefs which strike him as absurd."[126] Skinner's history is consequently not, according to Bartelson, a 'true' history, but is rather a "doxographical one, a *history of opinions* which moves forward as a result of the ceaseless battle between them."[127] He consequently concludes that "the very

[125] Quentin Skinner quoted in Bartelson, *ibid.*, p.65.

[126] *ibid.*, p.66.

[127] *ibid.*, p.68.

premise of suprahistoricity is a misguided one, and that," as a result, "it would be better to write a conceptual history of sovereignty [as he is doing, for example] from within history, and then as a *history of the present in terms of its past.*"[128] This history, according to Bartelson, is best achieved in accordance with a 'Foucauldian genealogical' approach.

Again criticising Skinner's application of speech-act theory to historical enquiry, Bartelson begins by following Foucault's assertion that statements ought to be distinguished from utterances and propositions, something which he claims Skinner does not do:[129]

> Statements are not like propositions; they are not logical entities with a fixed and intrinsic meaning and reference: the same proposition with the same meaning can figure as different statements depending on the epistemic conditions under which it occurs. Statements are not utterances: whereas Skinner tends to equate statements with utterances, different utterances can be repetitions of one identical statement.[130]

Thus, rather than interpreting statements in isolation, Bartelson, again following Foucault, places them within the bounds of discourse. Discourse is, however, "a difficult concept", made complicated by the number of "conflicting and overlapping definitions formulated from various theoretical and disciplinary standpoints."[131]

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[128] *ibid.*, p.58.

[129] *ibid.*, p.69.

[130] *ibid.*, p.69-70.

[131] Norman Fairclough, *Discourse and Social Change,* (Cambridge: Polity Press, 1992), p.3.

Indeed, as Sara Mill's notes, perhaps the most prominent proponent of discourse analysis, Michel Foucault, employs at least three different definitions of the term. Thus, in the first two instances, a discourse is both "the general domain of all statements" and "an individualisable group of statements."[132] With regard to the second definition, Mills explains that discourses are "groups of utterances which seem to be regulated in some way and which seem to have a coherence and a force to them in common."[133] However, according to Foucault's third definition, a discourse is also "a regulated practice which accounts for a number of statements."[134] It is this definition that best accords with that employed by Bartelson, who writes that discourses "are held together by regularities exhibited by the relations between different statements; a discourse is a system for the formation of statements."[135]

Contrary to the contextualist approach, the meaning of a text is consequently the function of the text and, "the necessity of a suprahistorical vantage point is abandoned, since being and truth are now objects of inquiry rather than points of departure."[136] Discourse analysis is consequently;

> ...based on 'a pure description of discursive events', and the analysis of statements then, is a historical analysis, but one that avoids all interpretation: it does not question things said as to what they are hiding, what they were

[132] Sara Mills, *Discourse,* (London: Routledge, 1997), p.7.

[133] *ibid.*

[134] *ibid.*

[135] Bartelson, *A Genealogy of Sovereignty,* p.70.

[136] *ibid.*, p.70.

> 'really' saying, in spite of themselves, the unspoken element they contain, the proliferation of thoughts, images and fantasies that inhabit them; but, on the contrary, it questions them as to their mode of existence, what it means to them to have come into existence, to have left traces, and perhaps to remain there, awaiting the moment when they might be of use once more; what it means for them to have appeared when and where they did.[137]

Context, in the sense employed by Skinner, is consequently irrelevant to explaining the meaning of statements within discourses. Rather, in a circular fashion, "[w]hat counts as the relevant context is...the particular discourse or family of statements in which a specific statement is being used."[138] Thus, rather than constituting a context in the usual sense, the "notion of context is replaced by the concept of *logical spaces* in which the unfolding and transformation of discourse occurs."[139] However, precisely why this cannot be simply classified as an alternative version of linguistic contextualism remains somewhat of a mystery. For, although this approach contends that the meaning of a text is the function of the text itself, the meaning of statements within texts is determined by the context of the text, and the meaning of the text is further determined by the context of the discourse. As such, it appears that the fundamental problem here is not that of context per se, but rather of drawing a hard and fast distinction between texts and contexts. Indeed, this point was made by Preston King in the previous section with regard to poor dizzy Fido.

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[137] *ibid.*

[138] *ibid.*, p.70-71.

[139] *ibid.*, p.71.

Nonetheless, the means according to which the 'unfolding and transformation of discourse' is best achieved is, according to Foucault, and by extension Bartelson, the genealogical approach. Of particular relevance to the study of traditions, Foucault writes;

> Genealogy does not pretend to go back in time to restore an unbroken continuity that operates beyond the dispersion of forgotten things; its duty is not to demonstrate that the past actively exists in the present, that it continues secretly to animate the present, having imposed a predetermined form to all its vicissitudes.[140]

Thus, Bartelson writes that "genealogy is strategically aimed at that which looks unproblematic and is held to be timeless; its task is to explain how these present traits, in all their vigor and truth, were formed out of the past."[141] Furthermore, unlike the Straussian enterprise, the genealogical approach "does not aim to supply a history of the past as it actually was," but rather to deal with "those episodes which are involved in the effective formation of that which was identified as problematic."[142] It is consequently, the "history of the present in terms of the past" and thereby escapes the past-present paradox discussed above. However, this does not eliminate the distinction between past and present but simply asserts that "there

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[140] Michel Foucault, "Nietzsche, Genealogy and History", in *Language, Counter-Memory, Practice: Selected Essays and Interviews,* ed. Donald F, Bouchard, trans. Donald F. Bouchard and Sherry Simon, (Oxford: Basil Blackwell, 1977), p.146.

[141] Bartelson, *A Genealogy of Sovereignty,* p.73.

[142] *ibid.*

must be a connection between past and present, lest the writing of history be an impossible or entirely meaningless enterprise."[143]

Genealogy is consequently, in Foucault's words, "a form of history which can account for the constitution of knowledges, discourses and domains of objects etc., without having to make references to a subject which is either transcendental in relation to the field of events or runs in its empty sameness throughout the course of history."[144] Rather than concerning itself with the origins of ideas, it aims to "cultivate the details and accidents that accompany every beginning" in order to ascertain its point of emergence.[145] In constructing the history of an idea, "[g]enealogy does not resemble the evolution of a species and does not map the destiny of a people."[146] Rather, it follows "the complex course of descent" from the point of emergence, paying attention to "the errors, the false appraisals, and the faulty calculations that", along the way, have given "birth to those things that continue to exist and have value for us."[147] In doing so, it highlights the "formation of discourse."[148] The Foucauldian genealogical approach therefore constitutes a means according to which the emergence and evolution of ideas can be understood. It is neither 'textualist' nor 'contextualist', but rather seeks to analyse ideas in terms

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[143] *ibid.*, p.74.

[144] Michel Foucault, "Truth and Power", in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977 by Michel Foucault*, ed. C. Gordon, (New York: Pantheon, 1980), p.117.

[145] Michel Foucault, "Nietzsche, Genealogy and History", p.144.

[146] *ibid.*, p.146.

[147] *ibid.*

[148] Michel Foucault, "The Discourse on Language", in *The Archaeology of Knowledge*, trans. A.M. Sheridan, (New York: Pantheon Books, 1971), p.234.

of the discourses in which they are situated, and in turn, discourses in terms of the 'logical spaces' in which they occur.

However, the genealogical approach's ability to facilitate the aims of this thesis is limited in two main ways. First, as "history of the present in terms of the past" it cannot incorporate a notion of the 'historical past'. Rather, all history, in this sense, is *instrumentally*, as opposed to cognitively, located in the present. As a result, although this approach has many useful ideas to contribute to the discursive analysis of traditions of thought, its singular notion of history limits its ability to evaluate the construction of such traditions. Secondly, and as will be discussed in more detail with regard to Brian Schmidt's 'critical internal discursive history', is the problem of what to do with context. For, as will be argued in the following section, although a vast number of epistemological and methodological problems are associated with explicitly 'contextual' approaches, this does not mean that context does not have a viable, and indeed critical, place in historical analysis.

'Critical internal discursive history'

> Methodological and epistemological claims about historicity and the recovery of textual meaning, about whether meaning is a function of an author's intention or a function of the autonomy of a text, are little more than parasitic accretions on, or justifications for, types of interpretive practice.[149]

As made particularly apparent in the preceding sections, John G. Gunnell has also emerged as one of Quentin Skinner's most stringent critics. Thus, despite recognising that Skinner's work has "contributed significantly to inspiring a new wave of substantive research in intellectual history", he also argues that "it has manifested, and perpetuated, a number of problems relating to the relationship between philosophy and the practice of inquiry", many of which have been discussed in previous sections of this chapter.[150] In particular, Gunnell is especially critical of Skinner's view of intentionality, as discussed in the previous section. According to Gunnell, interpretation is "a matter of recovering intentional meaning" however, contrary to Skinner's understanding, intentional meaning "is not a residue of, or evidence for, an author's thoughts, but theoretically identical with them."[151] Thus, criticising both the 'textual' and 'contextual' approaches outlined in previous sections, Gunnell writes;

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[149] John G. Gunnell, *Political Philosophy and Time: Plato and the Origins of Political Vision,* (Chicago: University of Chicago Press, 1968/1987), p.xii.

[150] John G. Gunnell, *The Orders of Discourse: Philosophy, Social Science and Politics,* (Lanham: Rowman & Littlefield, 1998), p.160.

[151] Gunnell, *Political Philosophy and Time,* p.xii.

> The recovery of meaning is not simply the result of an encounter with an autonomous text, but neither is it primarily the consequence of successfully closing a historical and linguistic context. Rather, it is a matter of advancing and defending theoretically informed and evidentially supported arguments about the form and content of a text and about the external evidence for its meaning.[152]

Interpretation then, "is the negotiation of meaning" according to the process of presenting such theoretically informed and evidentially supported arguments.[153]

However, Gunnell's criticisms of Skinner do not stand alone but rather exist as part of his wider interest in the historiography of political science. Indeed, although his article "The Historiography of American Political Science" critiques elements of Skinner's approach, it is more broadly concerned with the 'historical self-image' of the discipline.[154] Thus, Gunnell writes that "[w]hile attention to general historical contexts is important, it is necessary to avoid positing contexts that are little more than reified sociological constructs and/or rapidly extrapolated and unexamined images from secondary literature that are no more knowable or given than what they purport to explain."[155] More critically however, he also argues that;

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[152] *ibid.*

[153] Gunnell, *The Orders of Discourse,* p.156.

[154] John G. Gunnell, "The Historiography of American Political Science", in *The Development of Political Science: A Comparative Survey,* ed. David Easton, John G. Gunnell and Luigi Graziano, (London: Routledge, 1990), p.14.

[155] *ibid.*

> The history of political science is, at least in one important sense, the history of the internal evolution of arguments within the discipline. It is the details of this dialectical process that demand more attention. Although it is important to be sensitive to 'ecological' influences, not even in modern theories of biological evolution do investigators attempt to read off development against a determinative environment, it is the genetic capacities of past forms that are traced, and contexts play an important but ultimately random role.[156]

Having accorded contexts a limited role in the determination of meaning, Gunnell specifically attacks what he terms the 'myth of the tradition'. His self-consciously defined purpose is to "signify the manner in which the so-called tradition was an image conjured up in academic discourse and projected backward to create a virtual history."[157] At heart, the 'tradition' is conceived in the same manner as the context as "[t]he overall meaning ascribed to the tradition is advanced as the primary context for understanding particular texts which are, in turn, viewed as addressing a set of perennial issues."[158] By doing so, the meaning of texts incorporated within the supposed 'tradition' is prefigured according to their position in this constructed history. Thus, "[a]t the core of the myth is the assumption or claim that the texts, from Plato to Marx, that have been awarded classic status by historians of political theory represent an actual (or self-constituted) historical tradition or inherited pattern of thought that in some significant respect explains contemporary

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[156] *ibid.*

[157] Gunnell, *Orders of Discourse,* p.155.

[158] Gunnell, *Political Philosophy and Time,* p.ix.

politics."[159] Explaining precisely what is entailed by the 'myth of the tradition' Gunnell writes;

> The 'tradition' is a retrospective analytical construction which produces a rationalized version of the past. It is virtual tradition calculated to evoke a particular image of our collective public psyche and the political condition of our age, if not the human condition itself. It professes to tell us who we are and how we have arrived at our present situation.[160]

Gunnell's criticisms of the 'myth of the tradition' in political science are explicitly applied to the discipline of International Relations in the work of Brian C. Schmidt.

Schmidt's disciplinary history of International Relations begins from the premise that "most conventional accounts of the development of the field of international relations contain two historiographical assumptions that have led to a serious misrepresentation of the actual history of the field."[161] First, it is generally assumed that the history of International Relations can be "explained in terms of a classical tradition of which modern academic practitioners are the heirs."[162] Thus, both the discipline of International Relations and its constituent theoretical traditions are assumed to be 'epic' in proportions, beginning with the 'classic' works of the ancient Greeks and extending in a more or less unbroken pattern of thought to the

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[159] *ibid.*

[160] Gunnell, "The Myth of the Tradition", p.249.

[161] Brian C. Schmidt, *The Political Discourse of Anarchy: A Disciplinary History of International Relations*, (Albany: State University of New York Press, 1998), p.15.

[162] *ibid.*

present. Secondly, Schmidt argues that the history of International Relations has also proceeded from the assumption that "events in the realm of international politics have fundamentally structured the development of international relations as an academic field of study."[163] In particular, he adopts Gunnell's pertinent argument that "[s]uch external history often fails to establish concrete connections between such putative contexts and the object of investigation."[164] As such, Schmidt's work is constituted by two inter-related sets of arguments, one pertaining to the use of traditions as instruments of historical inquiry, and the other refuting the supposed epistemological viability of the 'contextualist' approach to history. In doing so, it prepares the way for an alternative approach, 'critical internal discursive' history.

Just as Oakeshott conceives of the past as either 'remembered', 'practical' or 'historical', Schmidt classifies traditions as either 'analytical' or 'historical'. What Schmidt terms an 'historical tradition' may exist as "a pre-constituted and self-constituted pattern of conventional practice through which ideas are conveyed within a recognizably established and specified discursive framework."[165] In a similar manner to the 'historical past' then, 'historical traditions', despite also being constructed in the present, utilise the past for the sake of the past, rather than for the purposes of the present. Conversely, 'analytical traditions' are "retrospectively created construct[s] determined by present criteria and concerns."[166] In a similar

[163] *ibid.*

[164] Gunnell, "The historiography of American political science", p.29.

[165] Schmidt, *The Political Discourse of Anarchy*, p.25.

[166] *ibid.*

manner to Hobsbawm's understanding of an 'invented tradition', 'analytical traditions' may be either deliberately, or inadvertently constructed for "presentist purposes rather than with the intention of actually reconstructing the past"[167] although, as mentioned earlier, Hobsbawm's use of the term 'invented' is somewhat problematic.

In criticising the use of traditions in the disciplinary history of International Relations, Schmidt argues that the 'distinguishing feature' of the 'traditions approach' has been the "tendency to view an *analytical* tradition as an actual *historical* one."[168] Quoting Gunnell, Schmidt argues that;

> ...at its core is the reification of an analytical construct. It is the representation of what is in fact a retrospectively and externally demarcated tradition as an actual or self-constituted tradition.[169]

Traditions have been used instrumentally to explain the present in International Relations without the explicit acknowledgement that they are simply analytical constructs and not representations of an 'historical' past. For example, Robert Gilpin's history of the 'realist tradition' in International Relations, according to Schmidt, makes "no attempt to elucidate the actual historical basis of this tradition or the manner in which writers in different centuries and intellectual contexts can be

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[167] *ibid.*, p.31..

[168] *ibid.*, p.25.

[169] Gunnell quoted in Brian C. Schmidt, *ibid.*

regarded as participants in an inherited pattern of thought."[170] Schmidt continues that "[t]his is because Gilpin is more concerned with validating contemporary neorealism than he is with understanding the history of the field of international relations."[171] Indeed, Gilpin, in his response to Richard K. Ashley's critical essay, "The Poverty of Neorealism,"[172] attempts to establish the dual traditionalist/scientific methodology of the contemporary realist tradition simply by invoking the names of "three great realist writers", Thucydides, Machiavelli and Carr.[173] While it is one thing to suggest that these three writers were, in fact, 'great', to suggest that, by extension, the realist tradition is itself great, is an entirely different and more questionable proposition. Indeed, this fate seems to have beset realism on a number of levels. As Steven Forde points out, 'classical realism';

> is a tradition that begins with Thucydides and extends through Machiavelli to the early social contract theorists Hobbes, Spinoza and Rousseau. Though this tradition has been immensely powerful, it is to some extent an artificial construct – these thinkers did not by and large think of themselves as adherents to a tradition, but as innovators.[174]

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[170] Brian C. Schmidt, *ibid.*, p.29.

[171] *ibid.*

[172] Richard K. Ashley, "The Poverty of Neorealism", in *Neorealism and Its Critics,* ed. Robert O. Keohane, (New York: Columbia University Press, 1986), pp.255-300.

[173] Robert Gilpin, "The Richness of the Tradition of Political Realism", in *Neorealism and Its Critics,* ed. Robert O. Keohane, (New York: Columbia University Press, 1986), p.306.

[174] Steven Forde, ""Classical Realism", in *Traditions of International Ethics,* ed. Terry Nardin and David R. Mapel, (Cambridge: Cambridge University Press, 1992), p.62.

Similarly, Schmidt also points out that Holsti argues that the realist tradition can be traced back to Hobbes and Rousseau without actually explaining the supposed continuity between their works and the works of contemporary realists.[175] In the case of Holsti, as well as Olsen and Groom, the notion of 'tradition' is simply a convenient way of schematising the development of International Relations in the twentieth century.

Gunnell and Schmidt's second criticism of the conventional disciplinary history of International Relations, although less related to the subject of traditions, is its propensity for 'contextual' methods of interpretation. "Proponents of contextualism," Gunnell writes, "have argued that their approach to disciplinary history, and intellectual history in general, avoids the vices of presentism by locating authors and texts in their proper historical context."[176] In demonstrating the propensity of International Relations theorists for employing a 'contextualist' approach to disciplinary history, Schmidt mentions works by Stanley Hoffman, Steve Smith, William C. Olsen and A.J.R. Groom, although curiously never discusses the fact that a Skinnerian contextualist history of International Relations has not been written.[177] Instead, his argument rests on the claim that "proponents of

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[175] Schmidt, *The Political Discourse of Anarchy,* p.30-31; K.J. Holsti, *The Dividing Discipline: Hegemony and Diversity in International Theory,* (Boston: Allen & Unwin, 1985), p.1.

[176] Gunnell quoted in Schmidt, *The Political Discourse of Anarchy,* p.32.

[177] Stanley Hoffmann, "An American Social Science: International Relations", *Daedalus,* Vol.106, (1977), pp.41-60; Steve Smith, "Paradigm Dominance in International Relations: The Development of International Relations as a Social Science", *Millennium: Journal of International Studies,* Vol.16, No.2, (1987), pp.189-206. The absence of a 'truly contextualist' account of the development

the contextual approach," presumably such as these prime suspects, "frequently misconstrue the relationship between external events and the internal disciplinary response manifested in conceptual, methodological, or theoretical change."[178] Although Schmidt's argument that the impact of context upon theory has not always been demonstrated, but rather assumed is well justified, it seems that his dismissal of context in its entirety has been somewhat hasty.

Schmidt's 'critical internal discursive history' consequently attempts to overcome the apparent limitations of the conventional and contextual approaches to the history of International Relations. The stated aim of his approach "is to reconstruct as accurately as possible the history of the conversation that has been constitutive of academic international relations."[179] In doing so, he intends to "provide an account of the conversations pursued by scholars who self-consciously understood themselves as participating in the formal study of international relations."[180] Contingent to this, is the reconstruction of 'tradition' as constituted by a "lineage of scholars who self-consciously and institutionally understood themselves" as being part of a particular recurring pattern of thought.[181] Although this notion of tradition, emerging from Schmidt's distinction between 'analytical' and 'historical' traditions is useful in the identification and construction of 'historically accurate' traditions, it

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of International Relations may be due to the fact that it would be an immensely time consuming and complicated task.

[178] Schmidt, *The Political Discourse of Anarchy*, p.36-7.

[179] *ibid.*, p.37.

[180] *ibid.*, p.38.

[181] *ibid.*, p.32.

is of little use in explaining how the current version of the Grotian tradition, a tradition that is largely 'analytical' but also contains 'historical' elements, came into being. However, the distinction is a useful one, in distinguishing between those elements of the Grotian tradition that are self-constituted and those that were entirely fabricated.

Similarly, Schmidt's rejection of the contextual approach presents both general and methodological problems specific to the analysis of the 'Grotian tradition' of International Relations. As Gerard Holden points out, despite Schmidt's stringent set of arguments against the contextualist approach it is still not clear "why [he] is so opposed to contextual explanations, or why he believes a degree of contextualism is incompatible with some version of his preferred 'internal discursive' method."[182] In particular, Holden argues that much of Schmidt's history of the development of International Relations, in particular the role of German scholars, such as Hans J. Morgenthau, emigrating to the United States, the American Civil War, and the colonial movement, "looks suspiciously contextual."[183] In a similar vein, Duncan Bell also argues that "it seems overly simplistic to present the history of the field without serious reference to actual events, or the major role that they can and do play in the generation of ideas, and in the bolstering of one position as opposed to another."[184]

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[182] Gerard Holden, "Who contextualizes the contextualizers? Disciplinary history and the discourse about IR discourse", *Review of International Studies,* Vol.28, (2002), p.257.

[183] *ibid.*, p.257-8.

[184] Bell, "International Relations: the dawn of an historiographical turn?", p.121.

Such criticisms are particularly pertinent to the study of the Grotian tradition in International Relations. In particular, Schmidt's 'critical internal discursive' approach is, in its current form, unable to account for the specific impact of external events on both Grotius' original works and period of resurgent interest in his works during the development of the 'Grotian tradition', for example, the explicit formation of the Grotius Society in response to the outbreak of World War One. Thus, while Schmidt is correct to advise against the citing of contexts without providing demonstrable evidence for their impact upon subsequent discourse, his own discursive history demonstrates that this does not have to equate to the absolute omission of contexts from the writing of intellectual history. Rather, as his 'critical internal discursive' approach suggests, the aim of this form of intellectual history is "to reconstruct as accurately as possible the history of the conversation that has been constitutive of academic international relations."[185] As such, where this conversation has included explicit responses to 'external events', for example Grotius' composition of *De Jure Praedae* as the legal defence for the Dutch East India Company, or his commissioning by the Dutch government to write a history defending the independence of Holland against Spanish rule, as evident in *The Antiquity of the Batavian Republic,* context ought to be taken into consideration.

[185] Schmidt. *The Political Discourse of Anarchy,* p.37.

Conclusion

In light of the critical limitations inherent in previous attempts to analyse its construction and substantive content, the remainder of this thesis begins from the premise that, according to Oakeshott's understanding of the term, the 'Grotian tradition' is, in all its varied forms, an invented tradition. Like all traditions, it is a tradition constructed by the retrospective association of antecedent ideas and, like many traditions, incorporates both historical and analytical components. For this reason, the manner in which the various incarnations of the Grotian tradition have been constructed remains critical to their analysis and, as such, Schmidt's distinction between historical and analytical traditions is particularly informative. Indeed, the remainder of this thesis broadly proceeds according to the central precepts entailed in Schmidt's 'internal discursive history', taking into account those modifications discussed above.

Thus, while Schmidt aims to "provide an account of the conversations pursued by scholars who self-consciously understood themselves as participating in the formal study of international relations"[186] the remainder of this thesis seeks to provide an account of the corresponding conversations that have been constitutive of the development of the Grotian tradition. However, two caveats apply here. First, as the Grotian tradition incorporates both historical and analytical elements, it is necessary to include not only those who 'self-consciously understood themselves as participating' in its development, but those who have retrospectively been

[186] *ibid.*, p.38.

associated with the tradition. By doing so, it will be possible to ascertain precisely what those figures who have retrospectively been associated with the Grotian tradition thought they were doing in composing their works of relevance to the tradition, what discourses and conversations they self-consciously thought they were engaging in and, as a result, to assess the extent to which they ought to be considered historical or analytical members of the 'Grotian tradition'. Secondly, as a largely analytical tradition formulated by constructing retrospective associations between, at times scarcely related thinkers, it stands to reason that the discourses in which they themselves were involved may stand outside the realm of what is ordinarily incorporated within the bounds of the 'Grotian tradition'. Thus, without getting into the circular problems associated with contextualising the context of the context of the context..., it does discuss the relevance of those discourses that, despite standing outside what is conventionally understood as 'Grotian' scholarship, nonetheless exerted an *explicitly identifiable* influence on the Grotian tradition's central thinkers. Thus, both in this sense, and as applied to the incorporation of political and historical contexts, problems associated with constructing a false relationship between texts and contexts are avoided by limiting the use of context in this way.

Despite reaching the conclusion that contexts may inform the interpretation of Grotius' works however, precisely which contexts ought to be considered remains a considerable point of contention. C.G. Roelofsen, for example, is particularly concerned with the political context of the seventeenth century and argues that

Grotius' 'political ambitions' and 'experience of public affairs' informed his major works, *Mare Liberum* and *De Jure Belli ac Pacis.*[187] As such, he contends that the analysis of these works ought to start with the study of Grotius' career. Martin van Gelderen however, along with Edward Keene and Peter Borschberg, emphasise the importance of the great colonial aspirations of the Dutch and the specific case of the Dutch East India Company for which Grotius was retained as legal defence. However, in his analysis of Grotius' early work *Commentarius in Theses XI,* Borschberg also cites the justification of the Dutch Revolt against Spanish rule as one of Grotius' primary motivations. Indeed, Grotius' defence of the Dutch Revolt is apparent in a number of his works including *De Antiquitate Reipublicae Batavicae, Annales et Historiae de Rebus Belgicis, De Jure Praedae* and *Commentarius in Theses XI: An Early Treatise on Sovereignty, the Just War and the Legitimacy of the Dutch Revolt.* Similarly, Grotius' desire to defend the sovereignty of Holland and the politico-theological position to which he, as a Remonstrant, ascribed, is evident in many works including *Commentarius in Theses, Ordinum Hollandiae ac Westfrisiae Pietas (The Religiousness of the States of Holland and Westfriesland), De Imperio Summarum Potestatum circa Sacra (The Magistrates Authority in Matters of Religion Asserted, The right of the state in the church), De Veritate Religionis Christianae (The truth of the Christian religion),* and *Verantwoordingh van de Wettelijcke Regieringh.* Most famously however,

[187] C.G. Roelofsen. "Grotius and the International Politics of the Seventeenth Century", in *Hugo Grotius and International Relations,* ed. Hedley Bull, Benedict Kingsbury and Adam Roberts, (Oxford: Clarendon Press, 1990), p.97. see also Cornelius G. Roelofsen, "Grotius and the Development of International Relations Theory: The 'Long Seventeenth Century' and the Elaboration of a European States System", *Grotiana,* Vol.18, (1997), pp.97-120.

Grotius' motivation in writing *De Jure Belli ac Pacis* is generally ascribed to the tumultuous times in which he lived.

As such, the historical 'context' in which Grotius composed his works is a complex and variously defined phenomenon. Indeed, Tanaka Tadashi simply incorporates a range of contexts evident in Grotius' work, listing the Netherlands' war for independence, Grotius' exile, the Thirty Years' War, denominational differences between the Protestant churches in the Netherlands, his appointment as the Swedish ambassador in Paris and his social status as a member of the Dutch commercial class, as amongst his foremost influences. Like Charles Wilson, who warns against viewing Grotius as "a cork bobbing in the waters of economic an [sic] social change"[188] however, Tadashi also exercises a great deal of caution in proportioning interpretive significance to these contexts and writes that "we risk distorting our understanding of Grotius' method or approach...if we overestimate these external elements".[189] Indeed, in light of this warning, and in accordance with the methodological principles outlined in this chapter, only those historical contexts that Grotius explicitly and self-consciously sought to address are discussed. In particular, by doing so, the following chapters demonstrate the extent to which the assumption that *De Jure Belli ac Pacis* was written solely to address the horrors of

[188] Charles Wilson, "Hugo Grotius and his world", in *The World of Hugo Grotius (1583-1645),* Proceedings of the International Colloquium Organized by the Grotius Committee of the Royal Netherlands Academy of Arts and Sciences, Rotterdam, 6-9 April 1983, (Amsterdam: Holland University Press, 1984), p.2.

[189] Tanaka Tadashi, "Grotius's Method: With Special Reference to Prolegomena" in *A Normative Approach to War: Peace, War and Justice in Hugo Grotius,* ed. Onuma Yasuaki, (Oxford: Clarendon Press, 1993), p.11.

the Thirty Years' War has resulted in the inaccurate interpretation of this work. Rather, it is argued that when considered in light of the contexts in which his early works were composed and from which the substantive contents of *De Jure Belli ac Pacis* have been drawn, its central concepts appear illuminated by an altogether different light.

In terms of Schmidt's distinction between 'historical' and 'analytical' traditions, two distinct types of 'Grotian' tradition can be identified. The first, discussed in Chapter Four is historical in nature and extends in two explicitly identifiable lines of transmission. The first is that most commonly associated with the broadly understood 'Grotian tradition' and extends from Grotius to Christian von Wolff and Emerich de Vattel. It is, in large part, a tradition of natural law scholarship but also draws upon those elements of positive law that emanated from the writings of Grotius and his intellectual predecessors. The second, is less often recognised as a 'Grotian' tradition, but nonetheless similarly exists in an explicitly identifiable line of transmission from Grotius to Samuel Pufendorf and Jean Barbeyrac. What is critical in the designation of these two traditions as 'historical' is the explicit sense in which its proponents self-consciously understood themselves to be following in a line of scholarship that, despite the evolution of its ideas, sought to retain a critical link to Grotius' works. Thus, although none of these theorists understood themselves to be members of a 'Grotian tradition', so titled, what they understood themselves to be doing amounts to the same thing.

The 'analytical' variants of the Grotian tradition are those that emerged in a variety of forms in twentieth century scholarship and include the traditions of Lauterpacht, Wight and Bull, amongst others. Unlike the 'historical' Grotian traditions however, the construction of which is regulated by the very definition of an 'historical tradition' itself, analytical traditions are constructed for presentist purposes and therefore employ a range of different notions of tradition itself. Therefore, the remaining chapters devoted to the analysis of the 'analytical' Grotian traditions, must take two factors into account; first, in accordance with the notion of 'context' discussed above, the 'presentist purposes' for which the specific tradition was constructed; and, following from this, the specific notion of 'tradition' employed in its construction. As will be seen, when considered together, these two factors prove invaluable in elucidating both the relationship between Hugo Grotius and the various incarnations of the tradition bearing his name, and the manner in which its definitive concepts have been conceived.

III

Hugo Grotius on Law, War and Love

> Grotius is legendary for his inexhaustible gift for mystification and obscurity... The greatest enigma in the study of Grotius is the man himself.[1]

Although Grotius is most commonly associated with the concept of international society in contemporary scholarship, periods of resurgent interest in his work that have contributed to his longevity in International Relations can be more consistently attributed to the popularity of the moral system presented in his works. As Terry Nardin writes, morality may be defined as the "principles and rules of conduct based on, though not necessarily identical with, the "manners" and "morals" (in Latin, *mores*, French *moeurs*) of a people, that is, with the generally acknowledged standards of conduct by which the acts and character of the members of a particular community are judged."[2] Although they have often been seen as synonymous and, as will be seen in Chapter Four, were certainly used interchangeably in association with Grotian scholarship in the nineteenth century, morality and ethics remain distinct entities. As Nardin explains, while morality is "defined by rules of proper conduct", the term 'ethics' refers to "a wide range of considerations affecting

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[1] Karma Nabulsi, *Traditions of War: Occupation, Resistance and the Law,* (Oxford: Oxford University Press, 1999), p.29.

[2] Terry Nardin, *Law, Morality and the Relations of States,* (Princeton: Princeton University Press, 1983).

choice and action."[3] As such, morality is narrower in scope than ethics and consequently does not afford the consideration of consequences or outcomes a great deal of attention. However, as will be seen, although they use the terms interchangeably, in a substantive sense, Grotian scholars have consistently discussed Grotius' moral scheme.

'Grotian morality' can be characterised as a three-tiered moral scheme. It is, in its most basic form, a 'minimal' morality, derived from the central precepts of the *jus naturae* (law of nature). When transposed to the international level and applied to the specific conduct of war, this minimal set of moral principles forms a second layer of morality expressed in Grotius' work in terms of the just war tradition. However, standing over and above the central precepts of the law of nature and the just war is an explicitly Christian morality that is adapted to apply to all of humankind regardless of faith. This overarching morality is dominated by the concepts of *caritas* (love) and *temperamenta* (moderation) and is manifested in the appeals to brotherhood, humanity, clemency, forgiveness and mercy that permeate his work.

In light of this, this chapter seeks to elucidate the central components of Grotius' moral scheme as the foundation of the 'Grotian morality' that has shaped subsequent Grotian scholarship. Before doing so however, it completes two preliminary and complimentary tasks. First, the chapter begins by providing a brief

[3] Terry Nardin, "Ethical Traditions in International Affairs" in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel, (Cambridge: Cambridge University Press, 1992), p.3.

biographical overview of Grotius' life and works.[4] In doing so, and in accordance with the methodological principles discussed in the previous chapter, it introduces a number of specific historical problems that Grotius explicitly and self-consciously sought to address. The second section is concerned with Grotius' early works and focuses on the conceptualisation of sovereignty that was so attractive to subsequent writers interested in the subject of colonialism. Although in many ways this mirrors the discussions of Edward Keene and Peter Borschberg, upon whom Keene openly relies,[5] it elaborates upon and deviates from the central purposes of both their works. In particular, by highlighting the level of congruence apparent in Grotius' early works and *De Jure Belli ac Pacis,* this section demonstrates that a range of prior historical events contributed to the historical and intellectual context in which much of *De Jure Belli ac Pacis* was written.[6] In doing so, it also helps to

[4] For a more complete biographical treatment of Grotius see; M. De Burigny, *The life of the truly eminent and learned Hugo Grotius,* (London: no publisher cited, 1754); Edward Dumbauld, *The life and legal writings of Hugo Grotius,* (Norman: University of Oklahoma Press, 1969); Charles Edwards, *Hugo Grotius The Miracle of Holland: A Study in Political and Legal Thought,* Introduction by Richard A. Falk, (Chicago: Nelson-Hall, 1981); W.S.M. Knight, *The Life and Legal Works of Hugo Grotius,* (London: Sweet & Maxwell, 1925); R.W. Lee, *Hugo Grotius.* Annual Lecture on a Mastermind, Henriette Hertz Trust of the British Academy 1930, from the Proceedings of the British Academy, Vol.XVI, (London: Humphrey Milford, 1930); Hamilton Vreeland, *Hugo Grotius,* (New York: Oxford University Press, 1917).

[5] Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics,* (Cambridge: Cambridge University Press, 2002), p.45. Peter Borschberg, *Hugo Grotius' Commentarius in Theses XI: An Early Treatise on Sovereignty, Just War and the Legitimacy of the Dutch Revolt,* (herein *CiT*), ed. & trans. Peter Borschberg, (Berne: Peter Lang, 1994).

[6] Onuma Yasuaki has criticised a similar argument in Peter Haggenmacher's *Grotius et la Doctrine de la Guerre Juste,* writing that he "tends to exaggerate the continuity between *De Jure Praedae Commentarius* and [*De Jure Belli ac Pacis*]." However, I go beyond Haggenmacher by highlighting continuities between works composed prior to *De Jure Praedae* and *De Jure Belli ac Pacis.* Onuma

foreground the argument presented in Keene's work that, contrary to much nineteenth century scholarship, Grotius did not precipitate, foretell or personally direct the Westphalian Peace Treaties. Grotius' moral system is then discussed in the following three sections focusing, respectively, on the conceptualisation of law, war and love in his works. In doing so, these sections also address a number of debates that have dominated recent Grotius scholarship pertaining to the extent to which *De Jure Belli ac Pacis* ought to be interpreted as a response to the challenge of moral scepticism or a deviation from Aristotelian notions of justice, and whether or not it constitutes the 'secularisation' of the law of nature.

Life and Works

Better known by his Latin eponym, Huig de Groot was born in Delft on Easter Sunday in 1583, a fact with which he was so impressed that for much of his life he insisted on celebrating his birthday on Easter Sunday rather than the actual anniversary of his birth, April 10.[7] By all accounts a precocious child,[8] he began his studies at the University of Leiden in 1594 at the age of eleven, "there to become the protégé of the leading Dutch intellectuals of his day."[9] As Charles Edwards

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Yasuaki, "Introduction", in *A Normative Approach to War: Peace, War and Justice in Hugo Grotius,* (Oxford: Clarendon Press, 1993), p.1.

[7] C. John Colombos, "Tercentenary of Grotius", *Transactions of the Grotius Society: Problems of Public and Private International Law* (hereafter *TGS*), Vol.31, (1945), p.xxxix.

[8] R.W. Lee writes that "[a]t the age of eight he consoles his father in Latin verse on the death of a brother. At twelve he converts his mother to Protestantism, insisting that she is too intelligent to remain a papist." Lee, *Hugo Grotius,* p.5.

[9] Edwards, p.2.

notes, the university records "show that he did not devote himself to any one discipline: rather, he saturated his mind with a broad choice of courses representative of the scholarly offerings of the university."[10] In particular, contrary to the popular assumption, there is no evidence to suggest that he studied law. Rather, following his graduation from the University of Leiden, Grotius was awarded an honorary doctorate of law by the University of Orlèans. Grotius completed his university education in 1597 and between then and his death in 1645 pursued a number of contending career paths.

Grotius the historiographer

In 1604 Grotius was appointed the official historiographer of Holland and, during his period of employment, is thought to have composed a number of historical works that sought to address the legitimacy of the Dutch Revolt from Spanish rule.[11] In 1610, he published *De Antiquitate Reipublicae Batavicae,* a work commissioned by the States of Holland and West-Friesland for which he was paid 300 pounds.[12] The dedication reads:

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[10] *ibid.*

[11] For further details on the Dutch Revolt see J.L. Price, *The Dutch Republic in the Seventeenth Century,* (Houndmills: Macmillan, 1998); Pieter Geyl, *The Revolt of the Netherlands (1555-1609),* (London: Ernest Benn, 1932); Charles Wilson, *Queen Elizabeth and the Revolt of the Netherlands,* (London: Macmillan, 1970); Martin van Gelderen, *The Dutch Revolt,* (Cambridge: Cambridge University Press, 1993).

[12] Jan Waszink, "Introduction" to Hugo Grotius, *The Antiquity of the Batavian Republic,* hereafter *(DA)* ed. & trans. Jan Waszink, (Assen: van Gorcum, 2000), p.6.

> A small booklet I offer you, most noble and illustrious Lords; or rather it offers itself, small in size but great in substance, and all yours; it defends your power, your rights and your sovereignty. Its purpose is to show, by discussing briefly the intermediate centuries from the origins of this people until the present day, that the Batavian State has always been ruled by the most prominent members of both estates, which rule has now come to you through unbroken succession.[13]

In doing so, he sought to establish that sovereignty rested, as it had done since the time of the Batavians, with Holland, thereby justifying their Revolt.

However, this was not Grotius' first work to address the question of sovereignty in the Dutch Republic. Thought to have been composed sometime between 1598 and 1600, *De Republica Emendanda* explicitly sets out to compare the early form of the Dutch republic with the Hebrew republican model of government and, in doing so, addresses questions pertaining to the internal sovereignty of Holland.[14] Similarly, in *Parallelon Rerumpublicarum,* a text which was in circulation in 1602 but of which only one book has survived, compares the republics of the United Provinces, Rome and Athens. Following this, *Commentarius in Theses XI,* composed sometime between 1603 and 1608 was composed with the explicit aim of justifying the Revolt of the Netherlands, as made evident by its subtitle, *An Early Treatise on*

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[13] Grotius, *DA,* p.49.

[14] Hugo Grotius, "*De Republica Emendanda:* A juvenile tract by Hugo Grotius on the emendation of the Dutch polity", (hereafter *RE*) ed. Arthur Eyffinger, in collaboration with P.A.H. de Boer, J. Th. De Smidt and L.E. van Holk, *Grotiana,* Vol.V, (1984), 4, p.69.

Sovereignty, Just War and the Legitimacy of the Dutch Revolt.[15] The specific means according to which Grotius attempts to achieve this justification was by utilising his own version of the just war tradition, the fundamental principles of which are also presented in *De Jure Praedae* and *De Jure Belli ac Pacis* and will be discussed further in this chapter.[16] However, in order to argue that the States of Holland were authorised to pursue a war against Spain and that, in doing so they were, according to the principles of the just war, defending their sovereignty, seeking recompense for Spain's failure to adhere to the *Blijde Inkomst* (Joyous Entry) and the Great Privilege of Mary of Burgundy,[17] and punishing Spain for injuries inflicted on its people by Phillip II's representative, the Duke of Alva, Grotius needed first to establish its sovereignty. In doing so, he specifically engages the republican debates surrounding the question of sovereignty that were prevalent at the time.[18] Finally,

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[15] Hugo Grotius, *Commentarius in Theses XI: An Early Treatise on Sovereignty, Just War and the Legitimacy of the Dutch Revolt,* (herein *CiT*), ed. & trans. Peter Borschberg, (Berne: Peter Lang, 1994).

[16] Hugo Grotius, *De Jure Praedae Commentarius,* trans. Gwladys L. Williams, (Oxford: Clarendon Press, 1950), p.67-8; Hugo Grotius *De Jure Belli ac Pacis Libri Tres,* trans. Francis F. Kelsey, (New York: Oceana Publications, 1964), II.I, p.169ff.

[17] The *Blijde Inkomst* (Joyous Entry) was a Brabantist pledge of 1356 which stated that the dukes were required to "obtain consent for all taxes and impositions (clause 5), for the striking and devaluation of the coinage (clause 7) and for the waging of war (clause 10)." H.G. Koenigsberger, *Monarchies, States Generals and Parliaments: The Netherlands in the Fifteenth and Sixteenth Centuries,* (Cambridge: Cambridge University Press, 2001), p.24. The Great Privilege of Mary of Burgundy gave the state "the right to gather at their own initiative, the condition that the States must give their consent to declarations of war, and the condition that decisions or decrees from the prince which are in conflict with earlier privileges are void." Waszink, p.15.

[18] For example, see the debate between Thomas Wilkes and English member of the Earl of Leicester's Council of State and François Vranck, the pensionary of Gouda. Thomas Wilkes, "Remonstrance to the States General and the States of Holland, March 1587, in E.H. Kossman and

also composed at around the same time although not published until 1657, *De Rebus Belgicis* also constitutes a history of the Dutch struggle against Spanish rule. Its opening lines read;

> I intend to Discourse the most famous Warre of our Times, and which may not improperly be called *Sociall,* or a Warr of Confederates, while the *Spaniard* and *Dutch* People accustomed to live under one Government, and who had as well been Victors, as Companions in Arms, differ between themselves...[19]

Indeed, although addressing the Spanish with a significantly less critical sentiment here, Grotius nonetheless once again seeks to establish the sovereignty and independence of Holland from Spanish rule.

Grotius the lawyer

By 1604 Grotius was twenty-one years old, had established his own legal practice and could boast the Dutch East India Company amongst his clients. The particular case for which he was retained by the Dutch East India Company involved the seizure of a Portuguese carrack in the Malacca Straits.[20] Captured by Admiral Jacob

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A.F. Mellink (eds.), *Texts Concerning the Revolt of the Netherlands,* (Cambridge: Cambridge University Press, 1974), p.271; François Vranck, "A short exposition of the rights exercised by kings, nobles and towns of Holland and West Friesland from time immemorial for the maintenance of the freedoms, rights, privileges and laudable customs of the country", 16 October 1587, in Kossman and Mellink, p.280-1.

[19] Hugo Grotius, *De Rebus Belgicis: Or, the Annals, and History of the Low-Countrey Warrs,* trans. Thomas Manley, (London: Middle-Temple, 1665), 1, p.1.

[20] See Peter Borschberg, "Hugo Grotius, East India Trade and the King of Johore", *Journal of Southeast Asian Studies,* Vol.30, No.2, (September 1999), pp.225-247; "The seizure of the Sta.

van Heemskerk in 1602, the 'Catherina' was laden with a considerable cargo of copper, silk, porcelain and bullion from Japan, China, Peru and Mexico. In the legal case that followed to resolve the question of who could rightfully claim possession of the prize and booty seized, Grotius was employed by the Dutch East India Company to defend its claim. The result of the case was *De Jure Praedae,* which, although not finished in time for the hearing, outlined Grotius' legal defence of the Dutch East India Company's actions. However, for reasons that remain unknown, Grotius did not publish *De Jure Praedae* during his lifetime. Rather, the manuscript of this work was discovered in 1864 at an auction of manuscripts held by descendents of Grotius, the Cornets de Groot family, organised by Martinus Nijhoff. The text was acquired by the Law Faculty at the University of Leiden, edited by H.G. Hamaker and published under the title of *De Jure Praedae* in 1868, and again, with minor revisions in 1869.[21] Since its discovery it has become widely accepted that this text formed the basis for the later 'masterpiece', *De Jure Belli ac Pacis.*

Catherina revisited: The Portuguese Empire in Asia, VOC politics and the origins of the Dutch-Johore alliance (1602-c.1616)", *Journal of Southeast Asian Studies,* Vol.33, No.1, (February 2002), pp.31-62.

[21] A number of contemporary Grotius scholars, of whom Richard Tuck is the most prominent, insist that the correct name of this work is *De Indis.* The first English translation of the work by Gwladys L. Williams was published in 1950 under the title *De Iure Praedae Commentarius: Commentary on the Law of Prize and Booty,* (Oxford: Clarendon Press and London: Geoffrey Cumberlege, 1950). As such, I too will refer to the text as *De Jure Praedae*. Tuck, *Rights of War and Peace,* p.81. See also *X: An Unpublished Work of Hugo Grotius's: Translated from an essay in Dutch (1868) written by the late Robert Fruin,* No place of Publication Given: LVGDVNI BATAORVM APVD E.J. Brill, 1925.

In 1608, negotiations that would ultimately result in the Twelve Years Truce between Spain and the Netherlands were underway. As Martin van Gelderen writes, "[w]ithin years the unexpected boom of Dutch overseas trade posed a serious threat to Spain and Portugal, whose kingdoms had been personally united since 1580."[22] Thus, in the ensuing peace negotiations, Philip II offered the Netherlands "the full recognition of Dutch liberty in the sense of independence and self-government in exchange for a complete Dutch withdrawal from the east and west Indies, from Asia and America."[23] Fearful that their trading rights would be rescinded, the Zeeland Chamber of the Dutch East India Company asked Grotius to "publish something on the right of the Dutch to sail freely to the Indies and engage in trade there."[24] As Margreet Ahsmann writes, "[o]ne of the Directors knew that Grotius had already written something of the kind, and indeed all the latter had to do was to rework parts of De jure Praedae to be able to accede to this request: the manuscript of De jure Praedae shows traces of this revision."[25] Thus, the twelfth chapter of *De Jure Praedae* appeared anonymously, although it was well known who the author was, under the title *Mare Liberum sive de jure quod Batavis competit ad Indicana*

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[22] van Gelderen, *The Dutch Revolt,* p.21. See also Jonathan I. Israel, *Dutch Primacy in World Trade, 1585-1740,* (Oxford: Clarendon Press, 1989).

[23] *ibid.,* p.21.

[24] Margreet Ahsmann, "Grotius as a Jurist", in *Hugo Grotius A Great European 1583-1645,* National Committee for the Commemoration of the Hugo Grotius' Quartercentenary, (Delft: Meinema, 1983), p.39.

[25] *ibid.,* p.38-39.

commercial dissertatio (henceforth known as *Mare Liberum*) in 1609.[26] Grotius' stated intention in composing *Mare Liberum* is expressed as follows:

> My intention is to demonstrate briefly and clearly that the Dutch – that is to say, the subjects of the United Netherlands – have the right to sail to the East Indies, as they are now doing, and to engage in trade with the people there. I shall base my argument on the following most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle, the spirit of which is self-evident and immutable, to wit: *Every nation is free to travel to every other nation, and to trade with it.*[27]

Similarly explaining his position in *De Jure Praedae* and *Mare Liberum* in a letter to a friend some years later Grotius wrote;

> Some years ago, when I saw how important the East India trade was to the security of my state, and how everyone agreed that the trade could not be carried on without force of arms, because of the power and untrustworthiness of the Portuguese, I set to work to persuade us to hang on bravely to the commerce we had so auspiciously begun...So I outlined the rights of war and booty, the history of the cruel and savage dealings of the Portuguese with ourselves, and many other relevant matters, in a fairly

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[26] Ahsmann also mentions that *Mare Liberum* was probably published too late to have any impact upon the negotiations that resulted in the truce of 9 April 1609 and that "later in life Grotius more or less disowned *Mare Liberum.*" *Ibid.*, p.39-40. Nonetheless, a defence of *Mare Liberum, Defensio capitis quinti Maris libri oppugnati a Guilelmo Welwode iuris civilis professore capite XXVII eius libri cui titulum fecit Compendium legume martimarum,* was published some time later.

[27] Hugo Grotius, *Mare Liberum (Freedom of the Seas)* (1609), trans. Ralph van Deman Magoffin, (New York: Oxford University Press, 1916), p.7.

> comprehensive treatise which I have so far refrained from publishing... [I published *Mare Liberum* at the time of the Peace Treaty] with the intention both of dissuading our side from renouncing any of our obvious rights, and of seeing whether the Spaniards would modify their claims somewhat in the light not only of compelling arguments but also of the opinion of their own authorities.[28]

As will be seen shortly however, it was with this set of arguments that Grotius established the relationship between the *jus naturae* (law of nature) and *jus gentium* (law of nations) that is central to his subsequent writings.

Grotius the politician

In 1607 Grotius was appointed advocate fiscal to the Court of Holland, a position that, despite his initial attempts to remain neutral, would see him embroiled in the politico-religious controversies of the following decade. Indeed, in the decade following the publication of *Mare Liberum* Grotius' writings were confined to the political and religious issues in which he was involved. Although it is not possible to elaborate upon the complexities of this period in Grotius' life here, it suffices to mention a number of texts composed during this time.[29] In 1613, Grotius published

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[28] Hugo Grotius quoted in Richard Tuck, "Review: Peter Haggenmacher, *Grotius et la Doctrine de la Guerre Juste (1983),*" *Grotiana,* Vol.7, (1986), p.91.

[29] For discussions of the theological controversies of the time see; Carl Bangs, *Arminius: A Study in the Dutch Reformation,* (Grand Rapids: Francis Ashbury Press, 1971); Arthur Cushman McGiffert, *Protestant Thought Before Kant,* (London: Duckworth, 1911); H. John McLachlan, *Socinianism in*

Ordinum Hollandiae ac Westfrisiae Pietas (The Religiousness of the States of Holland and West Freisland), a work defending the States of Holland against the charge of *'participes criminis'* relating to the appointment of a heretic professor at the University of Leiden. Although the first part of this work is dedicated to the specific charge, the second and third parts address wider controversies of the time, including the relationship between the church and state, the nature of sovereignty, and the need for religious toleration and the end of sectarian hostilities. He writes:

> 'He disagrees with me on predestination, I cannot tolerate him, he is heterodox, he is a heretic, he is Pelagian, he is a Socinian' should be given up as quickly as possible; today it is all too popular with many, but it is in itself harmful both to the Church and to the State, and a much more serious danger ensues from it...[30]

A degree of consensus has been reached between the various biographical accounts of Grotius' life and character that his foremost passion was for Christian (re)unification. As G.H.M. Posthumus Meyjes notes, "[h]e was in touch with members of nearly all the denominations of his day, but felt at ease with none of them."[31] For this reason he had tried to remain outside the sectarian controversies of the time, only becoming involved when his position as advocate fiscal necessitated

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Seventeenth Century England, (Oxford: Oxford University Press, 1951); Jan Den Tex. *Oldenbarnevelt,* 2 volumes, trans. R.B. Powell, (London: Cambridge University Press, 1973).

[30] Hugo Grotius, *Ordinum Hollandiae ac Westfrisiae Pietas,* ed. & trans. Edwin Rabbie, (Leiden: E.J. Brill, 1995), p.171.

[31] G.H.M. Posthumus Meyjes, "Grotius as an irenicist" in *The World of Hugo Grotius (1583-1645),* Proceedings of the International Colloquium Organized by the Grotius Committee of the Royal Netherlands Academy of Arts and Sciences, Rotterdam 6-9 April 1983, (Amsterdam: APA – Holland University Press, 1984), p.43.

it. As will be seen with regard to *De Jure Belli ac Pacis*, this desire for Christian unity permeates his later theological and political writings.

In 1617 Grotius published *Defensio fidei catholicae de satisfactione Christi. Adversus Faustum Socinium Senensem (A Defence of the Catholic Faith Concerning the Satisfaction of Christ, Against Faustus Socinius)*, thus further engaging him in the religious controversies of the time. Furthermore, although it was only published in 1647, *De Imperio Summarum Potestatum circa Sacra* was completed in 1618 immediately prior to Grotius' arrest and trial. Grotius himself summarises the central argument of this work by arguing that, "the authorities should scrutinize God's Word so thoroughly as to be certain to impose nothing which is against it; if they act in this way, they shall in good conscience have control of the public churches and public worship – but *without persecuting those who err from the right way.*"[32] This tract particularly reveals the increasing position of prominence afforded religious toleration in Grotius' works.

Grotius and his associate Johan van Oldenbarnevelt were arrested by representatives of their political opponents on August 29, 1618. Both were found guilty of an unspecified crime, Oldenbarnevelt facing execution and Grotius life imprisonment in Loevestein castle. Whilst in Loevestein, Grotius took advantage of "the leisure providentially accorded" and composed a number of works.[33] The first

[32] Grotius quoted in *ibid.*, p.22. Italics mine.

[33] R.W. Lee, "Introduction to the Jurisprudence of Holland *(Inleiding tot de Hollansche Rechts-Geleertheyd)* of Hugo Grotius", *TGS*, Vol.16, (1930), p.31.

was a pamphlet in his own defence, which aimed to "demonstrate the illegality of his conviction."[34] *Verantwoordingh van de Wettelijcke Regieringh van Hollandt ende West-Vrieslandt* provided a justification of Oldenbarnevelt's policies and rejected "the coup of 1618 as a violation of provincial sovereignty."[35] Published in 1621, the *Verantwoordingh* was banned as "seditious and libelous by the States General on November 24, 1622. During his imprisonment, Grotius also began work on *Bewys van den waren Godsdienst* which was published in Latin prose under the title of *Sensus Librorum Sex* in 1627 and subsequently as *De Veritate Religionis Christianiae (The Truth of the Christian Religion).* Grotius also composed *Inleidinghe tot de Hollandsche Rechtgeleerdheid (The Jurisprudence of Holland)* whilst imprisoned in Loevestein. As Lee notes in the Preface to the English translation of the work, "[t]he book was not intended for publication, but for the instruction of his sons in the laws of their country."[36] In a note composed by Grotius' brother William, included at the beginning of the work, it is revealed that although Grotius had intended to "bequeath it to his children for their instruction...without his knowledge various copies were in circulation, all imperfect and full of mistakes," thus compelling him to publish an authorised version.[37] The *Jurisprudence of Holland* has exerted a surprisingly significant influence on

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[34] H.J.M. Nellen, "Grotius' Exile" in *Hugo Grotius A Great European 1583-1645,* National Committee for the Commemoration of the Hugo Grotius Quartercentenary, (Delft: Meinema, 1983), p.25.

[35] *ibid.*

[36] R.W. Lee, Preface to Hugo Grotius, *The Jurisprudence of Holland,* p.vii.

[37] William de Groot, Address to the Reader in Hugo Grotius, *The Jurisprudence of Holland,* p.xiii.

subsequent jurisprudential theory, standing as a foundational text in the establishment of the Dutch and South African legal systems.[38]

Grotius the exile

With the help of his ever-resourceful wife, Maria von Reigersberg, Grotius managed to escape Loevestein hidden in a book chest and fled to Paris. After taking up residency there, he was received at the Court of King Louis XIII and granted an annuity of 3000 livres, a sum he was never to receive. As such, Grotius' time in Paris with a wife and children to support was one of abject poverty.[39] Accordingly, Grotius' time was consumed by two inter-related projects. The first was the writing of his masterpiece, *De Jure Belli ac Pacis* which he began in 1622 and published in 1625. *De Jure Belli ac Pacis* marked the culmination of Grotius' works to date and incorporates the central elements of *De Jure Praedae* and *Mare Liberum.* However, as will be seen shortly, this latest work is explicitly concerned with a far broader subject matter than his previous works, namely, the regulation of war in international relations.

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[38] According to Richard Tuck, the fundamental significance of this text is that it represents the beginning of a shift in Grotius' thinking away from his Aristotelian roots. In particular, what is significant about this apparent 'shift', he contends, is that it represents the precursor of what has become known as the 'impious hypothesis' of *De Jure Belli ac Pacis* to be discussed further in this chapter. As will be seen however, although Tuck's argument seems, at first sight, to provide a plausible explanation for this apparent shift in Grotius' thinking away from a voluntarist, theologically derived notion of natural law, Tuck's interpretation perceives far greater movement in Grotius' thought than is warranted here. Richard Tuck, *Natural rights theories: Their origin and development,* (Cambridge: Cambridge University Press, 1979), p.67.

[39] See for example, a letter sent by Maria to her brother, dated March 11, 1622 in R.W. Lee, "The Family Life of Grotius", *TGS,* Vol.20, (1934), p.15.

Most famously, Grotius' motivation in writing *De Jure Belli ac Pacis* is generally ascribed to the tumultuous times in which he lived and, in particular, the ravages of the Thirty Years' War. As David Hill writes, for example, "[h]e saw his own country rising from a baptism of blood and all Europe rent and torn by the awful struggle of the Thirty Years' War."[40] Similarly, Onuma Yasuaki also views as significant the fact that "Grotius lived during the era of the Thirty Years' War when pillaging and massacres were rampant," arguing that "[i]n order to overcome the tragedies caused by endless religious wars, he sought by all available means to bring within the domain of justice the relations of those independent powers, including states, which were capable of employing force."[41] Indeed, the desire of such writers to attribute Grotius' work to the Thirty Years' War is derived from the most often quoted tract of his work;

> I have had many weighty reasons for undertaking to write upon this subject. Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.[42]

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[40] David J. Hill, "Introduction", in Hugo Grotius, *The Rights of War and Peace,* trans. A.C. Campbell, (Washington and London: M. Walter Dunne, 1901), p.2.

[41] Onuma Yasuaki, "Introduction", to *A Normative Approach to War,* p.8.

[42] Grotius, *DJB,* Prolegomena 28, p.20.

Interestingly however, Grotius' further claims regarding the impact of such events on his writing later in the *Prolegomena* are conspicuously ignored:

> If anyone thinks that I have had in view any controversies of our own times, either those that have arisen or those which can be foreseen as likely to arise, he will do me an injustice. With all truthfulness I aver that, just as mathematicians treat their figures as abstracted from bodies, so in treating law I have withdrawn my mind from every particular fact.[43]

Thus, although it is apparent that Grotius sought to address the general climate of conflict evident in early seventeenth century Europe, there is little sense in which he can be said to be referring directly to the Thirty Years' War. This is also made especially apparent by the level of congruence evident between its contents and those of his earlier works, most of which were composed prior to the outbreak of the Thirty Years' War and for the specific purposes addressed above. Thus, on an intellectual level, *De Jure Belli ac Pacis* claims to be more concerned with finding a viable position between those who think nothing is lawful in war and those who think that everything is lawful in war. Grotius continues to write;

> Confronted with such utter ruthlessness many men, who are the very furthest from being bad men, have come to the point of forbidding all use of arms to the Christian, whose rule of conduct above anything else comprises the duty of loving all men. To this opinion sometimes John Ferus and my fellow-countryman Erasmus seem to incline, men who have the utmost devotion to peace in both Church and State; but their purpose, as I take it, is, when things have gone in one direction, to force them in the opposite

[43] *ibid.*, Prolegomena 58, p.29-30.

> direction is often so far from being helpful that it does harm, because in such arguments the detection of what is extreme is easy, and results in weakening the influence of other statements which are well within the bounds of truth. For both extremes therefore a remedy must be found, that men may not believe either that nothing is allowable, or that everything is.[44]

This remedy is to be found in the production of a systematic treatise on "[t]hat body of law...which is concerned with the mutual relations among states or rulers of state" and which has hitherto not been accomplished.[45] Indeed, two points are of importance here. The first is Grotius' claim that none before him have provided a systematic treatise on the law of nations, whilst the second pertains to the 'systematic' nature of his enterprise. In particular, Grotius names Franscisco de Vitoria, Henry of Gorkum, William Matthaei, John Lupus, Franciscus Arias, Giovanni de Legnano and Martinus Laudensis amongst those who have "said next to nothing upon a most fertile subject."[46] Meanwhile Balthasar Ayala and Alberico Gentili are mentioned in slightly more favourable light, Grotius writing of the latter; "Knowing that others can derive profit from Gentili's painstaking, as I acknowledge that I have, I leave it to his readers to pass judgement on the shortcomings of his work as regards method of exposition, arrangement of matter, delimitation of inquiries, and distinctions between various kinds of law."[47] The second important point is that Grotius explicitly claims that his treatise is based on mathematical principles. Although it is beyond the scope of this discussion to elucidate this point

[44] *ibid.*, Prolegomena 29, p.20.

[45] *ibid.*,Prolegomena 1, p.9.

[46] *ibid.*, Prolegomena 37, p.22.

[47] *ibid.*, Prolegomena 38, p.22.

in any great detail, it appears that Grotius was particularly influenced by the Dutch mathematician Simon Stevin who was a close friend of his father.[48]

In addition to further advancing his previously documented political, theological and economic goals, the second edition of *De Jure Belli ac Pacis* was also written with the aim of convincing the Dutch government that he should be allowed to return to Holland. As will be further elucidated in this chapter, this is revealed by comparing the original version of the work published in 1625 with the second edition which appeared in 1631.[49] Indeed, in 1625, around the time of the first publication of *De Jure Belli ac Pacis,* Prince Maurice died and was succeeded as Stadtholder by Frederick Henry, with whom Grotius had always been friendly.[50] Grotius had always assumed that following Maurice's death he would be permitted to return to his homeland, however, this never eventuated. According to Nellen, "Grotius' tragedy was that he never realised, or realised to late, that complete rehabilitation" with Holland was impossible.[51] On numerous occasions Grotius returned to Holland incognito, but on each occasion was uncovered by his enemies who threatened him with incarceration and execution.

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[48] For further discussions of Grotius' mathematical method see B.P. Vermeulen, "Grotius' Methodology and System of International Law", *Netherlands International Law Review,* Vol.XXX (1983), pp.374-382; Hendrick van Eikema Hommes, "Grotius' Mathematical Method", *Netherlands International Law Review,* Vol.XXXI, (1984), pp.98-106.

[49] Tuck, *Rights of War and Peace,* p.99.

[50] Lee, *Hugo Grotius,* p.38.

[51] Nellen, "Grotius' Exile", p.27.

In 1634, following a "chance meeting with one Salvius, vice-chancellor of Sweden", Grotius entered employment as Queen Christina of Sweden's ambassador in Paris.[52] However, diplomacy was never Grotius' forte and hence the position was not one he approached with overwhelming enthusiasm.[53] In November 1641, in a letter to his brother William he writes:

> The loss of my embassy, if I am threatened with it, leaves me undisturbed. It is not [a] source of wealth, and, as to honours, I have had enough of them. Old age steals on, and, sooner or later, will entitle me to rest. I shall not seek to withdraw them from affairs, while I am equal to them, nor run after them, if they go away from me.[54]

During this period, Grotius continued to publish a number of works, most of which were broadly theological in nature and reflected his "earnest desire to promote peace and union amongst the Christian Churches."[55]

In 1645, Grotius requested to be recalled from his position as ambassador. His wish was granted and he was released from service shortly before his death. At approximately midnight on August 28, 1645, Grotius died of exhaustion near

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[52] Edwards, p.7.

[53] Archbishop Abbot to Sir Ralph Winwood, Lambeth, 1st June 1613, in *Memorials of Affairs of State in the Reigns of Q. Elizabeth and K. James I. Collected (chiefly) from the Original Papers of the Right Honourable Sir Ralph Winwood,* Kt. 3 Volumes, (London: W.B. for T. Ward, 1725), Vol. III, p.459-60.

[54] Hugo Grotius to William de Groot, November 1641, quoted in R.W. Lee, "Grotius – The Last Phase, 1635-45", *TGS,* Vol.31, (1946), p.208.

[55] William Rattigan, "The Character of Hugo Grotius", in *Hugo Grotius: Essays on his Life and Works,* ed. A. Lysen, (Leyden: A.W. Sythoff, 1925), p.101.

Rostock having been shipwrecked on the Pomeranian coast. He was sixty-two and had published more than sixty volumes, texts and pamphlets during his lifetime.

Republicanism

As indicated above, much of Grotius' early work explicitly sought to defend the Dutch Revolt from Spanish rule and, in doing so, contributed to an on-going debate surrounding the relative merits of various republican forms of government. However, precisely what republicanism entails itself has not always been exactly clear. For Aristotle, republicanism centers around the notion of the *polis* as both the rational means to attaining the good life and the means according to which, in a hierarchical sense, citizens 'rule and are ruled in turn'. Although the term 'republic' simply refers to any form of political association here, it can also be conceived in a far narrower sense as the "particular rules and practices that would enable an association for the common good to achieve this purpose."[56] In the context of the late sixteenth and early seventeenth century, it was with this latter form of republicanism that writers were primarily concerned.

Foremost amongst those 'rules and practices' central to republican notions of government is the concept of sovereignty. Writing in the context of the French Civil Wars of the late sixteenth century, the term *souveraineté* first appeared in Jean Bodin's *Six Livres de la Republique* in 1576. Defined as "that absolute and

[56] Nicholas Greenwood Onuf, *The Republican Legacy in International Thought*, (Cambridge: Cambridge University Press, 1998), p.6-7.

perpetual power vested in a commonwealth which in Latin is termed *majestas,*"[57] Bodin's conceptualisation of sovereignty was central to what became known as the *thèse royale* or endorsement of the ideal of absolute sovereignty. However, standing in direct opposition to Bodin and the *thèse royale* were the monarchomachs whose *thèse parlementaire* argued in "favour of representative institutions against absolutist monarchical tendencies", and endorsed the peoples' 'right of resistance'.[58] Foremost amongst proponents of the *thèse parlementaire* was the Huguenot propagandist François Hotman whose *Francogallia* argued both that the king "does not have unlimited authority within his kingdom but is circumscribed by well-defined right and special laws" and, further to this, that "it is not lawful for the king to determine anything that affects the condition of the commonwealth as a whole without the authority of the public council."[59]

As the *Prolegomena* to *De Jure Belli ac Pacis* makes clear, Grotius was familiar with both these theorists, writing that "Bodin and Hotman have gained a great name, the former by an extensive treatise, the latter by separate questions; their statements and reasoning will frequently supply us with material in searching out the truth."[60] Rather than endorse either theorist's position however, it is apparent that Grotius sought to refute both extremes. Thus, referring to the Hebrew republic

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[57] Jean Bodin, *Six Books of the Commonwealth,* trans. M.J. Tooley, (Oxford: Basil Blackwell, no year), I.VIII, p.25.

[58] Willem Maas, "Grotius on Citizenship and Political Community", *Grotiana,* Vol.20/21, (1999/2000), p.168.

[59] François Hotman, *Francogallia,* ed. Ralph E. Giesey, trans. J.H.M. Salmon, (London: Cambridge University Press, 1972), XXV, p.459.

[60] Grotius, *DJB,* Prolegomena 55, p.29.

in *De Republica Emendanda*, Grotius writes, contrary to Hotman, that democracy is a form of government "believed to have been disapproved by God."[61] Similarly, arguing against Bodin's position however, he also writes that "God makes it clear that he did not approve of the supreme and uncontrolled power of a king."[62] Rather, he seeks a middle ground, usually described as 'aristocratic republicanism', that first emerged in *De Republica Emendanda* and is apparent throughout his subsequent works;

> We agree with the Hebrews in that we, too, show a distinct preference and the greatest respect for the aristocratic form of government, on the understanding, that is, that both the freedom of the people be guaranteed and the nations' eminent men maintain a sort of bond and reflect, as it were, the majesty of our state.[63]

Similarly, Grotius' notion of aristocratic republicanism is further advanced in *Parallelon Rerumpublicarum* composed at around the same time as *De Republica Emendanda.* Here Grotius compares the Dutch republic with those of Rome and Athens, again arguing in favour of "government based on a small number of virtuous men – a true aristocracy."[64]

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[61] Grotius, *RE,* 18, p.83.

[62] *ibid.*, 19, p.83.

[63] *ibid.,* 45, p.107. Curiously however, Grotius' support for centralised government here directly contradicts his later conviction, evident in *De Antiquitate*, that sovereignty ought to rest with the individual provinces of the Netherlands, thereby guaranteeing Holland's power and independence.

[64] Richard Tuck, *Philosophy and Government 1572-1651,* (Cambridge: Cambridge University Press, 1993), p.161.

However, what is particularly significant about Grotius' contribution to republican debate is not only the extent to which he deviates from both these dominant modes of thought, but his use, in *Commentarius in Theses* and subsequent works, of the just war tradition in defending the Dutch Revolt. Thus, rather than adopt the argument, favoured by the monarchomachs, that the Dutch were simply exercising a right of resistance, Grotius seeks to demonstrate that they were engaged in a just war.[65] However, in order to argue that Holland had entered a just public war against Spain, Grotius needed to demonstrate two logically antecedent points; first that Holland was, in fact, a sovereign entity, and secondly, that its sovereignty had been impugned by the Spanish, thereby permitting Holland to pursue a defensive war. In doing so Grotius expounds a theory of divisible sovereignty, thereby refuting the central element of Bodin's conceptualisation of the term.

Although Grotius ultimately aims to distinguish himself from Bodin, the definition of sovereignty presented at the beginning of *Commentarius in Theses* is derived from Bodin's contention that;

> ...it is the distinguishing mark of the sovereign that he cannot in any way be subject to the commands of another, for it is he who makes law for the subject, abrogates law already made, and amends obsolete law. No one who is subject either to the law or to some other person can do this.[66]

Thus, in *Commentarius in Theses* Grotius defines sovereignty as follows;

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[65] Keene, *Beyond the Anarchical Society,* p.46.

[66] Bodin, I.VIII, p.28.

> When we speak of 'sovereignty', however, we take it to mean that supreme right to govern the state which recognizes no superior authority among humans, such that no person(s) may, through any rights of his (their) own, rescind what has been enacted thereby.[67]

A similar definition of sovereignty is also evident in *De Jure Belli ac Pacis;*

> The power is called sovereign whose actions are not subject to the legal control of another, so that they cannot be rendered void by the operation of another human will.[68]

In addressing the question of how the sovereign is identified, Grotius similarly relies on Bodin's definition. Bodin argues that a sovereign can be identified according to the *marques de la souveraineté,* also known in Latin editions of his work as *iura maiestatis.* As suggested by notes found with the manuscript to *Commentarius in Theses,* and as made evident by its content, Grotius is following Bodin when he further defines sovereignty as follows;

> The *'actus summae potestatis'* (marks of sovereignty) are those that no-one may receive by virtue of any higher right, for example, the supreme right to introduce legislation and to withdraw it, the right to pass judgement and to grant pardon, the right to appoint magistrates and to relieve them of their office, the right to impose taxes upon the people etc.[69]

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[67] Grotius, *CiT,* 16, p.214-215.

[68] Grotius, *DJB,* I.III.VII.1, p.102.

[69] Grotius, *CiT,* 23, p.224, 225.

Again, a similar passage is found in *De Jure Belli ac Pacis;*

> Now the acts of the sovereign executive power of a directly public kind are the making of peace and war and treaties, and the imposition of taxes, and other similar exercises of authority over the person and property of its subjects, which constitute the sovereignty of the state.[70]

Despite their apparent similarities however, a number of critical differences are apparent in the conceptualisations of sovereignty presented by Grotius and Bodin. The first is evident in the omission of Bodin's second mark in Grotius' exposition of the marks of sovereignty; the right to make war and peace.[71] Interestingly however, this mark is included in the later work *De Jure Belli ac Pacis* as cited above. A possible explanation for its omission in *Commentarius in Theses* is the extent to which it accords with the right of private companies to make war, espoused in defence of the Dutch East India Company in *De Jure Praedae* composed at approximately the same time and to be discussed in a later section of this chapter.

Secondly, central to both Bodin and Grotius' understandings of sovereignty is the right of the sovereign to raise taxes. As Bodin writes; "[t]he right of levying taxes and imposing duties, or of exempting persons from the payment of such, is also part of the power of making law and granting privileges."[72] As Borschberg notes however, "Grotius carefully reinterprets Bodin's ninth mark of sovereignty...[and]

[70] Grotius, *DJB,* p.61.

[71] Bodin, I.10, p.44.

[72] *ibid.,* I.10, p.47-8.

recognizes two such marks: one which entitles the imposition of taxes, and the other to block or impede their collection."[73] This division is of particular relevance to Grotius' defence of the Dutch Revolt as it confers upon the States of Holland "a certain mark of sovereignty before the [outbreak] of the war."[74] Thus Grotius argues "that there was one mark of sovereignty that belonged legitimately to our estates; i.e. the right to raise taxes."[75]

However, anticipating the objection that "the estates were not entitled to raise taxes on their own account," Grotius continues:

> I reply that this is not a [valid] objection at all. For it remains the case that there was a mark of sovereignty that did not belong to the prince, and hence, that he did not possess full sovereignty. If, then, we take the mark [of sovereignty which entitles] to raise taxes, this rested with the prince and the estates together; [however] if we take the right of blocking the taxes, that rested with the estates alone.[76]

Herein lies the fundamental point of divergence between Bodin and Grotius' respective understandings of sovereignty. Thus, while Bodin pursues a royal absolutist line, contending that sovereignty is absolute and indivisible, Grotius asserts both that "estates can have sovereign power," and that "[t]he marks of sovereignty may be divided among several parties."[77] Thus, directly addressing

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[73] Borschberg, p.120.

[74] Grotius, *CiT*, 9, p.269.

[75] *ibid.*, 9, 67, p.269.

[76] *ibid.*, 9, 69, p.271.

[77] *ibid.*, 4, 22, p.223 & 225.

Bodin's idea that sovereignty is indivisible and hence must lie with one person, the monarch, Grotius writes that "it is possible for some marks to reside with those persons or assemblies, while others do not."[78]

The apparent divisibility of Grotius' conception of sovereignty is an issue of some confusion and contention as he simultaneously argues against both Bodin's notion of absolute sovereignty and Hotman's claim that sovereignty cannot be held absolutely. Thus, in *De Jure Belli ac Pacis* Grotius directly addresses Hotman and argues that "in some cases the sovereign power is held absolutely, that is with right of transfer."[79] However, in the following section he seeks to demonstrate that "in some cases the sovereign authority is not held absolutely," hence further confusing the issue.[80] The confusion is however, resolved with the further claim that "sovereignty must in itself be distinguished from the absolute possession of it."[81] Thus, "while sovereignty is a unity, in itself indivisible," it can be divided into two parts, *partes potentiales* and *partes subjectivas,* 'potential' and 'subjective' parts.[82] Using the following example in both *Commentarius in Theses* and *De Jure Belli ac Pacis* he explains that "[w]hen, as sometimes happened, there were two Roman Emperors who divided the administration of the Empire, one taking the Eastern half, the other the Western, it cannot be denied that the Empire remained one, and that each Emperor could exercise without regard for the other those marks [of

[78] *ibid.*, 4, 24, p.227.

[79] Grotius, *DJB*, I.III.XII.1, p.115.

[80] *ibid.*, I.III.XIII, p.119.

[81] *ibid.*, I.III.XIV, p.120.

[82] *ibid.*, I.III.XVII, p.123.

sovereignty] that pertained to his half alone."[83] Thus, potential sovereignty can be, but usually is not, held absolutely,[84] while subjective sovereignty may, and often is, divided among several parties. The situation is further clarified with the explanation that "just as there cannot be two persons [each] with absolute ownership of the same thing, so full sovereignty cannot rest with several parties [simultaneously], that is to say, with [each of] these parties separately."[85] Thus, while sovereignty itself, and its constituent marks are, by nature, absolute when considered individually, the possession of sovereignty as a whole, is generally divided.

With regard to the Dutch situation then, Grotius writes;

> The people or the senate, or [in fact] any other assembly that possesses full sovereignty, may transfer some of its marks (for example, the rights of supreme judgement and pardon) to the prince, to the extent of retaining none for itself. But the people or the senate can also transfer these marks with the proviso that it retains for itself the right of legislation, or to appoint (all or some of) the magistrates, or that the prince may only exercise these powers with its consent. No one will deny that the prince has no right to break such a contract or basic law of the empire and interfere with the other marks [of sovereignty].[86]

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[83] Grotius, *CiT*, 4, 29, p.233. In *De Jure Belli ac Pacis* he writes that "the sovereignty of Rome was a unity, yet it often happened that one emperor administered the East, another the West, or even three emperors governed the whole empire in three divisions." I.III.XVII, p.123.

[84] Grotius, *DJB*, I.III.XIV, p.120.

[85] Grotius, *CiT*, 4, 26, p.229.

[86] *ibid.*, 4, 25, p.227.

This argument raises two points that are crucial to Grotius' defence of the Dutch Revolt against Spanish rule. First, in accordance with Thesis 3, "[t]he estates can have sovereign power,"[87] Grotius establishes the mark of sovereignty held by the estates of the States of Holland in raising taxes. Furthermore, he then argues that "[h]e who holds some mark of sovereignty has the right to wage war in defence of that mark [of sovereignty], even [if this be conducted] against a party which holds another mark,"[88] justifying the Dutch action. As discussed above and in *De Jure Praedae*, Grotius writes that the Duke of Alva "proceeded to alter the laws, judicial provisions, and system of taxation."[89] As such, he maintains that the Dutch had the right to defend their mark of sovereignty, namely jurisdiction over taxation. However, he continues his argument raising the second crucial point in his defence of the Dutch Revolt:

> He [Alva] took these measures in contravention of the statutes which the various princes have sworn to observe and which, by striking a rare balance between princely power and liberty, were preserving both the due measure of imperial sovereignty and the foundations of the local state.[90]

In so arguing, Grotius refers to both the notion of limited sovereignty apparent in the above mentioned claim that "[n]o one will deny that the prince has no right to break such a contract or basic law of the empire and interfere with the other marks

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[87] *ibid.*, 3, p.223.

[88] *ibid.*, 5, p.237.

[89] Grotius, *DJP*, XI.I, p.169.

[90] *ibid.*

[of sovereignty],"[91] and a specific set of statutes, the *Blijde Inkomst* and the Great Privilege of Mary of Burgundy.[92] As will be seen as the central precepts of Grotius' understanding of the just war tradition are further elaborated upon in this chapter, in doing so, he provides a further just cause for the Dutch action.

Grotius concludes *Commentarius in Theses* by arguing that;

> It is evident, then, that the war against Philip was at its inception a just war both in respect of its cause and with regard to [the States of Holland's] defence of their mark [of sovereignty]. Likewise, it was just to continue against Philip this war which had originally been undertaken against Alba. We have now demonstrated briefly that it was legitimate for the States of Holland to convene against Philip; that the war was both just on the basis of a majority decision; and that all the marks of sovereignty that once rested with Philip were [subsequently] acquired by the States of Holland.[93]

As such, contrary to the arguments of his contemporaries, Grotius utilises a particular conception of divisible sovereignty, also apparent in *De Jure Belli ac Pacis*, to demonstrate the legitimacy of the Dutch Revolt, both to the leaders of Holland themselves, and to their foreign allies, in terms of the just war. However, although it is central to the purposes of *Commentarius in Theses*, this work does not include a complete theorisation of precisely what adherence to the fundamental precepts of the just war tradition entails. For this reason, the just war and its natural

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[91] Grotius, *CiT*, 4, 25, p.227.

[92] Waszink, p.15.

[93] Grotius, *CiT*, Conclusion, p.283.

law underpinnings are discussed in some detail in the following sections with regard to Grotius' larger works, *De Jure Praedae* and *De Jure Belli ac Pacis.* Thus, Grotius' defence of the Dutch Revolt is revisited in the context of his theorisation of the just causes of war.

Law

Like Francisco de Suárez before him, Grotius offers multiple definitions of what is meant by the term *jus*. However, whereas Suárez divided *jus* into two forms, *facultas moralis* and *lex,* Grotius identifies three types of law. The first definition of law Grotius offers is minimalist in nature and "means nothing else than what is just."[94] Phrased alternatively, that which is lawful is that which is not unjust, that which is unjust being that "which is in conflict with the society of beings endowed with reason."[95] As will be seen shortly, the perfect rights ordained by Grotius' understanding of the law of nations, those which are innate and therefore universal, correspond to this minimal understanding of law.

However, corresponding with Suárez's *facultas moralis*, law may also be understood as constituting "a body of rights" whereby a right is "a moral quality" and is necessarily attached to a person.[96] As he continues, "[w]hen the moral quality

[94] Grotius, *DJB,* I.I.III.1, p.34.

[95] *ibid.*

[96] *ibid.*, I.I.IV, p.35.

is perfect we call it *facultas*, 'faculty'; when it is not perfect, *aptitudo*, 'aptitude'."[97] *Facultas* is similarly divided into *potestas* (power) - which is internally divided into *libertas* (power over oneself or freedom), *potestas patria* (power over others) and *potestas dominica* (power over slaves) – *dominium* (ownership) and *credita* (contractual rights). However, *facultas* can also be divided into *vulgaris* (common) and *eminens* (superior) law, the latter designation being appropriate when power is "exercise by the community over its members and their property for the common good."[98]

Finally, the third meaning of the term Grotius offers states that law "has the same force as statute whenever this word is taken in the broadest sense as a rule of moral actions imposing obligation to do what is right."[99] This form of law is also divided into two main types, natural and volitional law. As will be seen shortly, natural law is subdivided into the *jus naturae primarium* and *jus naturae secundarium*, the primary and secondary laws of nature, while volitional law has human and divine variants. Divine volitional law is derived directly from the will of God,[100] and has been communicated to humankind on three occasions, "immediately after the creation of man...in the renewal of human kind after the Flood, [and] lastly in the more exalted renewal through Christ."[101] Unlike Hebraic law which is applicable only to those of Jewish birth, "[t]hese three bodies of divine law are beyond doubt

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[97] *ibid.*

[98] Tanaka Tadashi, "Grotius's Concept of Law", p.34.

[99] Grotius, *DJB*, I.I.IX.1, p.38.

[100] *ibid.*,I.I.X.2, p.39.

[101] *ibid.*, I.I.XV.2, p.45.

binding upon all men, so far as they have become adequately known to men."[102] Finally, human volitional law also exists in three forms, municipal law (*jus civile)*, law narrower than municipal law, and the law of nations (*jus gentium).* In all this however, it is the law of nature that stands as the centerpiece of Grotius' work.

The law of nature

At heart, the law of nature, in its various forms, contends that a universal and immutable order exists "governing everything in the universe, including human conduct."[103] Within this order, humans are assumed to be inherently rational, and as such, the set of innate ideas that constitute natural law, are understood to be evident to all rational beings. For Christian natural law theorists, including Grotius, the law of nature is derived from eternal law bestowed upon existence by God via the act of creation. Although secular variants of the natural law tradition exist and, as will be seen shortly, many writers view *De Jure Belli ac Pacis* as marking the move from an ecclesiastically derived natural law to a secular law of nature, it is explicitly upon this Christian tradition that Grotius relies in constructing his own version of the law of nature.

The first explicit expression of Grotius' natural law theory is to be found in *De Jure Praedae* and provides the underpinnings for his defence of the Dutch East India

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[102] *ibid;*, I.I.XVI, p.45.

[103] Chris Brown, Terry Nardin and Nicholas Rengger (eds.), *International Relations in Political Thought: Texts from the Ancient Greeks to the First World War,* (Cambridge: Cambridge University Press, 2002), p.312.

Company and the Dutch Revolt against Spanish rule. It is also here that the fundamental principles of 'Grotian morality' are to be found. In the *Prolegomena* to *De Jure Praedae* Grotius begins his defence of the Dutch East India Company by outlining 'nine rules and thirteen laws' which together form the basis of his early natural law theory. The first rule and primary principle states that "*What God has shown to be His Will, that is law.*"[104] In a fundamental sense then, natural law is derived from divine creation. What is more, every part of this creation "has received from Him certain natural properties whereby that existence may be preserved and each part may be guided for its own good, in conformity, one might say, with the fundamental law inherent in its origin."[105] As such, the purpose of the law of nature is the maintenance of this divinely inspired order whereby God's creation may be preserved.

The first principle of this natural order is love, the 'primary force' of which is "directed to self-interest."[106] From this, the first two precepts of the law of nature emerge;

> First, that *It shall be permissible to defend [one's own] life and to shun that which threatens to prove injurious;* and secondly, that *It shall be permissible to acquire for oneself, and to retain, those things which are useful for life.*[107]

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[104] Grotius, *DJP*, p.8.

[105] *ibid.*, p.9.

[106] *ibid.*

[107] *ibid.*, p.10.

However, in addition to the innate desire for self-preservation indicated by self-love, Grotius also bestows upon the individual the characteristic of innate sociability. He explains that "God judged that there would be insufficient provision for the preservation of His works, if He commended to each individual's care only the safety of that particular individual, without also willing that one created being should have regard for the welfare of his fellow beings, in such a way that all might be linked in mutual harmony as if by an everlasting covenant."[108] Thus love must actually be conceived as two-fold, incorporating both "love for oneself and love for others."[109] With this, the two fundamental premises of Grotius' natural law theory are introduced; humankind's instinctual desire for self-preservation and the innate sociability of individuals in God's creation.

Deriving a minimal form of morality from these foundational precepts of the law of nature, Grotius introduces the two most fundamental laws of his moral code;

> *Let no one inflict injury upon his fellow... [and] Let no one seize possession of that which has been taken into the possession of another.*[110]

These laws of 'inoffensiveness' and 'abstinence' are distinctly minimal in nature, not requiring individuals to actively *do* something, but rather imploring them to avoid certain behaviour. Considered together, these two laws form the basis of human society by relying on what Grotius terms humankind's 'social impulse'; "the

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[108] *ibid.*, p.11.

[109] *ibid.*

[110] *ibid.*, p.13-14.

intermingling of one's own goods and sentiments with the goods and ills of others."[111] In order to maintain this society however a further two common or minimal laws are required; first, that *"Evil deeds must be corrected"* and secondly that, *"Good deeds must be recompensed".*[112] Considered together, these laws and rules constitute the most minimal form of morality evident in Grotius' work. What is more, in Grotius' view, because they are derived from the innate qualities of human existence, they are universal. As will be seen shortly, this is of particular importance to the aims of his later work, *De Jure Belli ac Pacis.*

However, Grotius recognises that in civil society these laws are not sufficient for the maintenance of order and therefore adds two additional laws;

> *Individual citizens should not only refrain from injuring other citizens, but should furthermore protect them, both as a whole and as individuals;* secondly, *Citizens should not only refrain from seizing one another's possessions, whether these be held privately or in common, but should furthermore contribute individually both that which is necessary to other individuals and that which is necessary to the whole.*[113]

Although similarly derived from the law of nature, as they require action on the part of individuals, these laws are of a slightly higher morality than the previous four above. Grotius explains that although according to a minimal common morality it is reasonable to suppose that "one's own good takes precedence over the good of

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[111] *ibid.*, p.14.

[112] *ibid.*, p.15.

[113] *ibid.*, p.21.

another person", the more 'general' laws pertaining to the common good, ought to "take precedence on the ground that it includes the good of individuals as well."[114] Herein lies one of the most important distinguishing features of Grotius' concept of morality. In this regard, Lon Fuller makes a useful distinction between what he terms the "morality of duty" and the "morality of aspiration".[115] Although all the moral laws introduced thus far fall within the bounds of the morality of duty, that is they impose a particular obligation on individuals, the last two laws reside further along in the duty-aspiration continuum. However, as will be seen shortly, they are themselves superseded by a range of moral principles introduced in *De Jure Belli ac Pacis* – for example, *caritas* and *temperamenta* - that fall well within the bounds of the morality of aspiration.

Taking the maintenance of order to an international level, a secondary law of nature, known in other contexts as the *jus gentium* or 'primary law of nations' is required. This law is derived from Grotius' second rule which states that "*What the common consent of mankind has shown to be the will of all, that is law.*"[116] Critically, Grotius is referring here to an antecedent notion of the *jus gentium* that had been derived from the Roman understanding of the term as the "customary law governing relations between members of different *gentes* or peoples."[117] Following this, [i]n late medieval and early modern Europe, *ius gentium* meant customary law

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[114] *ibid.*

[115] Lon L. Fuller, *The Morality of Law,* (New Haven: Yale University Press, 1964), p.5.

[116] Grotius, *DJP,* p.12.

[117] Brown, Nardin and Rengger, p.319.

common to all or most civil societies."[118] In this sense, the *jus gentium* was simply the law of nature applied to states or other political associations and thus, due to the universal rationality of humankind, was common to all states. Critically however, in these states it was manifested as a form of civil law. However, simultaneously, a second type of *jus gentium*, also known as *jus inter gentes* was identified as existing *between* states.[119] Recognising the problems inherent in this dual conceptualisation, Francisco de Suárez not only distinguishes between the two but argues that only *jus gentium* defined as "the law which all the various peoples and nations ought to observe in their relations with one another" is *jus gentium* proper.[120] However, Suárez's *De Legibus, ac Deo legislatore* was only published in 1612 and, as such, it was only by the time he composed *De Jure Belli ac Pacis* that Grotius could possibly have read the work.[121]

As indicated by the second and sixth laws introduced above, a notion of *dominium* is central to Grotian natural law and hence Grotian morality. In particular, it plays a critical role in Grotius' defence of the actions of the Dutch East India Company. As Yanagihara Masaharu writes, while the term *dominium* "is usually equated with the

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[118] *ibid.*

[119] *Jus inter gentes* was coined by Richard Zouche in *Iuris et Iudicii Fecialis, sive, Iuris Inter Gentes, et Quaestionum de Eodum Explicatio, (An Exposition of Fecial Law and Procedure, of or Law between Nations, and Questions concerning the Same),* trans. J.L. Brierly, (Washington: Carnegie Institution, 1911).

[120] Francisco de Suárez, "On Laws and God the Lawgiver", in *Selections From Three Works,* trans. Gwladys L. Williams, (Oxford: Clarendon Press, 1944), p.447.

[121] For further discussion of the relationship between the laws of nature and nations see Hendrik van Eikema Hommes, "Grotius on Natural and International Law", *Netherlands International Law Review,* Vol.XXX, (1983), pp.61-71.

right over things", *imperium* is commonly designated with "right over persons."[122] In particular, he points out that Grotius provides two different explanations for the concept of *dominium*, a legal and an historical one. However, the starting point of both is the contention that;

> He who bestowed upon living creatures their very existence, bestowed also the things necessary for existence...However, since God bestowed these gifts upon the human race, not upon individual men, and since such gifts could be turned to use only through acquisition of possession by individuals, it necessarily followed that...'what had been seized as his own' by each person should become the property of that person. Such seizure is called *possessio* (the act of taking possession), the forerunner of *usus* [use], and subsequently of *dominium* [ownership].[123]

In accordance with this claim, the historical explanation for the emergence of *dominium* maintains that "[t]here was no private property under the primary law of nations."[124] However, as Anthony Pagden writes, "[b]y the terms of the social contract, men...renounced their primitive freedom in exchange for security and the possibility of moral understanding which only civil society could provide."[125] In order to maintain order in such civil society, private ownership [*dominium*] came to be distinguished from common possession [*communio*]. In large part, *dominium*

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[122] Yanagihara Masaharu, "*Dominium* and *Imperium*", in *A Normative Approach to War: Peace, War and Justice in Hugo Grotius*, ed. Onuma Yasuaki, (Oxford: Clarendon Press, 1993), p.147.

[123] Grotius, *DJP*, p.11.

[124] *ibid.*, p.226-7.

[125] Anthony Pagden, "Dispossessing the barbarian: the language of Spanish Thomism and the debate over the property rights of the American Indians", in *Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden, (Cambridge: Cambridge University Press, 1987), p.81.

was differentiated from *communio* by the fact of occupation [*occupatio*]. Thus, by instituting a right of *dominium,* which was, incidentally, only granted to individuals in possession of the faculty of reason, the means according to which individuals could continue to attain the things necessary for self-preservation are established. Thus Grotius writes that;

> ...we find that those things which were wrested from the original domain of common ownership have been divided into two categories. For some are now public property, or in other words, they are owned by the people, which is the true meaning of the expression 'public property'; and others are strictly private property, that is to say, they belong to individuals.[126]

As such, *dominium,* in Grotius' view, must be conceived as 'private':

> From the foregoing discussion, two inferences may be drawn. The first runs as follows: those things which are incapable of being occupied, or which never have been occupied, cannot be the private property of any owner, since all property has its origin as such in occupancy. The second inference may be stated thus: all those things which have been so constituted by nature that, even when used by a specific individual, they nevertheless suffice for general use by other persons without discriminations, retain to-day and should retain for all time that status which characterised them when first they sprang from nature.[127]

[126] Grotius, *DJP*, p.230.

[127] *ibid.*, p.231.

In legal terms, "[t]he recognition of the existence of private property led to the establishment of law on the matter, and this law was patterned after nature's plan."[128]

Three conclusions fundamental to Grotius' defence of the Dutch East India Company's actions can be derived from this understanding of *dominium* as private property. The first concerns the further concept of *dominium mundi.* Originating in the ninth century, the concept of *dominium mundi* fundamentally asserted that the Pope is the 'Vicar of Christ' on earth.[129] Further, as its early proponents reasoned, as "imperial power had been conferred on the Christian emperors by the Pope, it simply followed...that the emperors must [also] possess *dominium mundi.*"[130] In accordance with the assumption that the Pope possessed sovereignty over the entire world, in 1493 Alexander VI divided the "then recognised world into two parts by the "Papal line of demarcation" and giving all discovered and explored lands west of it to the Spanish, all east of it to the Portuguese."[131] As Anthony Pagden writes, the main objective of Alexander VI's action was to "limit future rivalry between Castile and Portugal."[132] As neither sovereign granted this concession by the Pope could lay reasonable claim to being 'universal rulers' however, the Bulls came under sustained attack from a number of quarters. As such, Chapter III of *Mare*

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[128] *ibid.*

[129] See James Muldoon, *Popes, lawyers and infidels: the Church and the non-Christian World, 1250-1550,* (Liverpool: Liverpool University Press, 1979).

[130] Tuck, *Rights of War and Peace,* p.59-60.

[131] Vreeland, p.45.

[132] Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c.1500-c.1800,* (New Haven: Yale University Press, 1995), p.47.

Liberum is dedicated to defending the claim that "The Portuguese have no right of sovereignty over the East Indies by virtue of title based on the Papal Donation."[133] In doing so, Grotius argues that the Pope merely desired "to settle the disputes between the Portuguese and the Spaniards" and hence, that "the decision of the Pope will not of course affect the other peoples of the world."[134]

The second conclusion Grotius draws from his theory of the law of nature is that "infidels cannot be divested of public or private rights of ownership."[135] Referring to the case at hand, he writes;

> Therefore, since the Portuguese lack both possession and title to possession, since the property and sovereign powers of the East Indians ought not to be regarded as things that had no owner prior to the advent of the Portuguese, and since that property and those powers – belonging as they did to the peoples of the Indies – could not rightly be acquired by other persons, it follows that the said people are not Portuguese chattels, but free men possessed of full social and civil rights.[136]

"On this point," he writes, adding insult to injury, "there is little doubt, even among Spanish authorities."[137] Thus, the King of Johore, the East Indian nation to which Grotius is referring, is conceived as a sovereign from whom sovereign rights cannot be divested. Furthermore, neither his public lands nor the privately owned lands of

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[133] Grotius, *ML*, p.15; see also *DJP*, p.216ff.

[134] *ibid.*

[135] Grotius, *DJP*, p.216.

[136] *ibid.*, p.226.

[137] *ibid.*

his people can be justifiably acquired on the grounds that they are the possession of infidels. However, this point brought into serious question how the colonial movement was to be justified. Addressing this concern, Grotius writes that "even discovery imparts no legal right save in the case of those things which were ownerless prior to the act of discovery,"[138] thereby reconciling his theory with the needs of the Dutch colonial movement by adding that unoccupied and uncultivated lands may be freely acquired by colonial forces.

Thirdly, in defending the right of the Dutch to trade in the East Indies, Grotius utilises the further notion that "[i]t is, then, quite impossible for the sea to be made the private property of any individual; for nature does not merely permit, but rather commands, that the sea shall be held in common."[139] Grotius' contingent thesis that "[n]either the sea itself nor the right of navigation thereon can become the exclusive possession of a particular party" is explicitly appropriated from the esteemed work of Fernando Vazquez de Menchacha.[140] Although *dominium* could not be claimed over the sea, humans are granted the natural right to use it and its resources. In so arguing, Grotius establishes the natural right of both the state of Holland and the privately owned Dutch East India Company to use the sea and its resources. By extension then, both private individuals and states are also permitted to defend such rights and punish those who impugn them. However, in arguing this, Grotius also draws upon his own derivation of the just causes of war to be discussed later in this

[138] *ibid.*, p.221.

[139] *ibid.* p.232.

[140] *ibid.* p.216.

chapter. Indeed, it suffices here to say that although natural law and just war elements of Grotius' defence of the Dutch East India Company cannot be reasonably divorced from one another, the foundational position of his theory of the law of nature is evident from the outset.

The sceptical challenge

Although the central precepts of the law of nature introduced in *De Jure Praedae* also form the foundation of *De Jure Belli ac Pacis*, a number of critical differences can be discerned. In particular, in attempting to identify a universal moral order according to which a set of laws regulating the incidence and conduct of war could be devised, Grotius necessarily had to answer the moral sceptics' claim that universal morality cannot possibly exist. In recent years Richard Tuck has offered a particular interpretation of *De Jure Belli ac Pacis* that maintains that Grotius' 'main intention' in the *Prolegomena* of this work is to answer the sceptical challenge, made by figures such as Michel de Montaigne and Pierre Charron that "there are no laws of nature."[141] In large part, this claim ought to be seen as part of Tuck's broader attempt to demonstrate that Grotius was a 'Hobbist before Hobbes'. As will be demonstrated in the following discussion however, Tuck's interpretation rests not only on a misinterpretation of Grotius' works, but a similarly flawed reading of Hobbes.

[141] Robert Shaver, "Grotius on Scepticism and Self-Interest", in *Grotius, Pufendorf and Modern Natural Law,* ed. Knud Haakonssen, (Aldershot: Ashgate, 1999), p.63; Richard Tuck, "Grotius, Carneades and Hobbes", *Grotiana,* Vol.IV, (1983), pp.43-62.

Nonetheless, the *Prolegomena* to *De Jure Belli ac Pacis* is, at least in part, concerned with refuting the sceptical claim that there is no law of nature and, by extension, that justice is folly. To retreat a few steps in Grotius' reasoning here, it is recalled that foremost amongst his aims in composing *De Jure Belli ac Pacis* was to devise a universal set of moral standards according to which war could be regulated. The form which this set of moral standards was to take was that of a set of laws of war and peace derived from the common morality of the law of nature. With this in mind, Grotius quite sensibly recognises that his "discussion concerning law will have been undertaken in vain if there is no law."[142] As such, he seeks to 'fortify' his work against "this very serious error," selecting Carneades as the 'pleader' he is to refute:

Carneades, then, having undertaken to hold a brief against justice, in particular against that phase of justice with which we are concerned, was able to muster no argument stronger than this, that, for reasons of expediency, men imposed upon themselves laws, which vary according to customs, and among the same peoples often undergo changes as times change; moreover that there is no law of nature, because all creatures, men as well as animals, are impelled by nature towards ends advantageous to themselves; that, consequently, there is no justice, or, if such there by, it is supreme folly, since one does violence to his own interests if he consults the advantage of others.[143]

[142] Grotius, *DJB*, Prolegomena 5, p.10.

[143] *ibid.*, p.10-11.

In sum, as Petter Korkman explains, "Carneades claims that prudential wisdom sometimes conflicts with the demands of justice and that a person must therefore choose to be either wicked (unjust) or foolish (unwise)."[144] By extension, it stands to reason that "justice either does not exist...or that, if it exists, it is 'the greatest folly', because it injures itself 'by promoting the interests of others'."[145]

According to Tuck, Grotius' intention to refute Carneades cannot be simply viewed as an attack on "a long-dead classical philosopher."[146] Rather, he interprets it as an attack on the modern sceptics, Montaigne and Charron. However, as a range of writers, including Perez Zagorin, Andrew Lister and Robert Shaver argue, there is "no real evidence that [Grotius] ever perceived scepticism as a serious challenge or made it, as has been erroneously claimed, the target of his moral philosophy."[147] However, this is, in large part, part of Tuck's larger attempt to present Grotius as a 'Hobbist before Hobbes' by emphasising the position of self-preservation in Grotius' works whilst simultaneously ignoring the primacy of sociability to his theory of natural law. In particular, Tuck's argument that "Hobbes need not be seen as differing from Grotius over ethical matters, strictly understood, *at all,*"[148] is

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[144] Petter Korkman, "Barbeyrac on Scepticism and on Grotian Modernity", *Grotiana,* Vol.20/21, (1999/2000), p.78.

[145] *ibid.*

[146] Tuck, "Grotius, Carneades and Hobbes", p.44.

[147] Perez Zagorin, "Hobbes Without Grotius", *Journal of the History of Political Thought,* Vol.XXI, No.1, (Spring 2000), pp.16-40; Andrew Lister, "Scepticism and Pluralism in Thomas Hobbes's Political Thought", *History of Political Thought,* Vol.XIX, No.1, (Spring 1998), p.36; Robert Shaver, "Introduction", in *Hobbes,* ed. Robert Shaver, (Aldershot: Ashgate, 1999), p.xiv.

[148] Tuck, *Rights of War and Peace,* p.135.

based on a fundamentally misleading reading of the *Prolegomena* to *De Jure Belli ac Pacis.*

Grotius responds to Carneades' argument by asserting that although humans are animals, they are "much farther removed from all other animals than the different kinds of animals are from one another."[149] This is, in large part, due to the 'impelling desire' of humans for peaceful society. Thus, Grotius argues that, "[s]tated as a universal truth...the assertion that every animal is impelled by nature to seek only its good cannot be conceded."[150] Following from this, Grotius continues that the "maintenance of social order...is the source of law properly so-called", thereby refuting the sceptical claim that law is purely promulgated for the purposes of self-interest.[151] "To this sphere of law", he writes, belongs;

> the abstaining of that which is another's, the restoration to another of anything of his which we may have, together with any gain which we may have received from it; the obligation to fulfil promises, the making good of a loss incurred through our fault, and the inflicting of penalties upon men according to their deserts.[152]

Thus, Grotius combines a notion of the inherent sociability of individuals with an emphasis on natural rights that began to emerge in *The Jurisprudence of Holland* to

[149] Grotius, *DJB,* Prolegomena, 6, p.11.

[150] *ibid.*

[151] *ibid.*, Prolegomena 8, p.12.

[152] *ibid.*, p.12-13.

argue that the 'essence' of law, 'properly defined', "lies in leaving to another that which belongs to him, or in fulfilling our obligations to him."[153]

However, Grotius does not wholly discount the position of self-interest in the law of nature, writing that;

> The law of nature nevertheless has the reinforcement of expediency; for the Author of nature willed that as individuals we should be weak, and should lack many things needed in order to live properly, to the end that we might be the more constrained to cultivate the social life. But expediency afforded an opportunity also for municipal law, since that kind of association of which we have spoken, and subjection to authority, have their roots in expediency. From this it follows that those who prescribe laws for others in so doing are accustomed to have, or ought to have, some advantage in view.[154]

However, from this, Tuck has extrapolated a theory of the law of nature in which self-preservation is the central principle, thereby aligning Grotius with Hobbes. This interpretation is misleading and has come under sustained attack in recent years. Even on a fairly superficial level, a simple reading of Grotius' works reveals that he was not interested in self-interest first and foremost, but rather saw it as one of a number of principles comprising the law of nature. Referring to the first law of nature, Grotius writes in *De Jure Praedae* that "the order of presentation of the first set of laws and of those following immediately thereafter has indicated that one's

[153] *ibid.*, Prolegomena 10, p.13.

[154] *ibid.*, Prolegomena 16, p.15.

own good takes precedence over the good of another person – or, let us say, it indicates that by nature's ordinance each individual should be desirous of his own good fortune in preference to that of another."[155] When considered in isolation, this statement seems to afford self-preservation a position of prominence in the natural law theory. However, as this passage continues, "in questions involving a comparison between the good of single individuals and the good of all (both of which can be correctly described as 'one's own,' since the term 'all' does in fact refer to a species of unit), the more general concept should take precedence on the ground that it includes the good of individuals as well."[156] At heart, this claim can be derived back to Grotius' understanding of human nature as innately sociable. In a similar manner, in *De Jure Belli ac Pacis* Grotius argues that "it is not contrary to the nature of society to look out for oneself and advance one's own interests, *provided* the rights of others are not infringed."[157] As Vermeulen and Van Der Wal explain, "when Grotius calls the laws of self-preservation the first principles of nature he does not imply that these laws have priority over those regarding the well-being of other persons: he merely means to say that these principles are 'first according to nature' because they impel every animal (man included) instinctively from the moment of its birth to have regard for itself and preserve itself."[158] Thus, Grotius concludes "[w]rongly…does Carneades ridicule justice as folly", for "[e]ven if no advantage were to be contemplated from the keeping of the law, it

[155] Grotius, *DJP,* p.21.

[156] *ibid.*

[157] Grotius, *DJB,* I.II.I.6, p.54.

[158] B.P. Vermeulen and G.A. Van Der Wal, "Grotius, Aquinas and Hobbes. Grotian natural law between *lex aeterna* and natural rights", *Grotiana,* Vol.16/17, (1995/1996), p.79-80.

would be a mark of wisdom, not of folly, to allow ourselves to be drawn towards that to which we feel that our nature leads."[159]

Transposed to the international level, Grotius maintains that "law is not founded on expediency alone [as] there is no state so powerful that it may not some time need the help of others outside it."[160] On this point, Grotius criticises Carneades for 'passing over' the law of nations,[161] and writes;

> But just as the laws of each state have in view the advantage of that state, so by mutual consent it has become possible that certain laws should originate as between all states, or a great many states; and it is apparent that the laws thus originating had in view the advantage, not of particular states, but of the great society of states. And this is what is called the law of nations, whenever we distinguish it from the law of nature.[162]

Although this tract has often been cited as 'evidence' that Grotius' works contain the origins of the modern concept of 'international society', for Grotius, this vaguely conceived notion of 'international society' or a 'society of nations' is characteristic of the sixteenth and seventeenth century idea that the force of the *jus gentium* (law of nations) is located in the *societas gentium* (society of nations). In particular, the final line – usually omitted in contemporary scholarship – makes it clear that he is referring to *jus inter gentes* notion of *jus gentium* functioning in

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[159] *ibid.*, Prolegomena 18, p.15-16.

[160] Grotius, *DJB*, Prolegomena 22, p.17.

[161] *ibid.* Prolegomena 17, p.15.

[162] *ibid.*

relation to the *societas gentium*, as opposed to the *jus gentium* derived from the *jus naturae*.

Aristotelian justice

The concept of justice is itself, in a fashion typical of Grotius' method, divided into two forms, expletive and attributive justice. "Legal rights", he writes, "are the concerns of expletive justice *(iustitia expletrix)*, which is entitled to the name of justice properly or strictly so called."[163] This form of justice is also known as 'contractual' justice in an Aristotelian sense. On the other hand, attributive justice, *(iustitia attributrix)* is concerned with 'aptitude', that is 'worthiness' or 'fairness'.[164] This form of justice broadly accords with Aristotle's 'distributive justice', and "is associated with those virtues which have as their purpose to do good to others, as generosity, compassion, and foresight in matters of government."[165] Attributive justice is consequently part of a morality that is higher than the common basic morality of expletive justice.

As Tanaka Tadashi notes however, "[o]pinions are divided on whether Grotius is to be considered an Aristotelian."[166] As Richard Tuck explains, "Aristotelian ethics assumed that there are real moral properties to be perceived and an intersubjectivity of morals, despite the fact that there can be no *a priori* and demonstrative

[163] *ibid.*, I.I.VIII.1, p.36.

[164] *ibid.*, I.I.VIII.2, p.37.

[165] *ibid.*

[166] Tanaka Tadashi, "Grotius's Method: With Special Reference to Prolegomena", in *A Normative Approach to War*, p.21.

arguments about ethical matters."[167] In contemporary literature, the case has been made, most prominently by Tuck, that Grotius moves away from the Aristotelian roots evident in *De Jure Praedae* in *De Jure Belli ac Pacis.* In particular, Tuck argues, the distinction between distributive and commutative justice in *De Jure Praedae* is "avowedly Aristotelian."[168] As Tuck points out, *The Jurisprudence of Holland* "constitutes a decisive move away from an Aristotelian theory of justice" by discussing justice in terms of rights.[169] Indeed, in *The Jurisprudence of Holland* Grotius writes that justice is "a virtuous disposition of the will to do that which is just."[170] 'Just' is defined as "what corresponds with right" and right itself can be understood in either a narrow or a wide sense.[171] Thus, Grotius explains that "[r]ight widely understood is the correspondence of the act of a reasonable being with reason" while understood narrowly, is "the relation which exists between a reasonable being and something appropriate to him by merit or property."[172] As such, justice is certainly discussed in terms of rights and, in turn, rights are entirely conceived in a purely rational sense.

However, Tuck's argument misses the fundamental point of Grotius' complaint with Aristotle in *De Jure Belli ac Pacis.* Indeed, despite claiming that "[a]mong the

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[167] Tuck, "Grotius, Carneades and Hobbes", p.44.

[168] Tuck, *Natural rights theories,* p.59.

[169] *ibid.*, p.66-67.

[170] Grotius, *Jurisprudence,* 1.2, p.2.

[171] *ibid.*, 1.2-3, p.2.

[172] *ibid.*, 1.5-6, p.2.

Philosophers Aristotle deservedly holds the foremost place,"[173] the *Prolegomena* to *De Jure Belli ac Pacis* is particularly critical of Aristotle's notion of justice. Thus Grotius writes;

> For, being unable to find in passions and acts resulting therefore the too much as the too little opposed to that virtue, Aristotle sought each extreme in the things themselves with which justice is concerned. Now in the first place this is simply to leap from one class of things into another class, a fault which he rightly censures in others; then, for a person to accept less than belongs to him may in fact under unusual conditions constitute a fault, in view of that which, according to the circumstances, he owes to himself and to those dependent on him; but in any case the act cannot be at variance with justice, the essence of which lies in abstaining from that which belongs to another.[174]

Furthermore, Grotius continues to argue that "[b]y equally faulty reasoning Aristotle tries to make out that adultery committed in a burst of passion, or a murder due to anger, is not properly an injustice."[175] Rather, injustice "has no other essential quality than the unlawful seizure of that which belongs to another" regardless of whether it "arises from avarice, from lust, from anger, or from ill-advised compassion."[176] What Grotius is getting at here is that Aristotle's notion of justice is too broad and consequently includes things that ought to be considered forms of a higher morality.

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[173] Grotius, *DJB,* Prolegomena 42, p.24.

[174] *ibid.*, Prolegomena 44, p.25.

[175] *ibid.*

[176] *ibid.*

Secularisation of natural law

Although the fundamental precepts of Grotius' law of nature are quite clearly derived from an understanding of God as the divine creator of all existence in *De Jure Praedae,* in *De Jure Belli ac Pacis* natural law is defined not as "what ever God has shown to be His will" but as "a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined by the author of nature, God."[177] As such, Grotius here seems to be "insisting strongly that such true principles of natural law possess an intrinsic validity"[178] and can perhaps be understood as an attempt to devise a truly universal moral order in a time of religious division. Indeed, Grotius continues to write in *De Jure Belli ac Pacis* that "[w]hat we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him."[179] This passage of Grotius' work has been particularly seized upon in Grotius scholarship and, in many spheres, has become definitive of the manner in which his works are portrayed. Known as the *etiamsi daremus*, or impious hypothesis, a vast array of scholars have interpreted this sentence as

[177] Grotius, *DJP*, p.8; *DJB*, I.I.X.1, p.38-9.

[178] E.B.F. Midgley, *The Natural Law Tradition and the Theory of International Relations,* (New York: Harper & Row, 1975), p.141.

[179] Grotius, *DJB*, Prolegomena 11, p.13.

constituting the secularisation of natural law.[180] However, two particular points of contention are associated with this claim. Indeed, not only are Grotius scholars divided over whether or not Grotius did, in fact, intend his hypothesis to be 'impious' but, amongst those who answer in the affirmative, precisely where the idea originated remains a point of contention.

Some degree of consensus exists that it did not originate with Grotius himself however, theorists have attributed it to a range of writers including Gregory of Rimini, Francisco de Suarez and Gabriel Vazquez.[181] However, as Javier Hervada writes, "[t]he medieval origin of the hypothesis...appears to be situated in the Augustinian Gregorius Novelli of Rimini [Gregory of Rimini], who died in 1358."[182] According to Gregory, "what indicates that a thing is good or bad is right reason."[183] Thus, sin, "that which is morally evil" is, in actual fact, nothing more than "that which is in opposition to right reason."[184] Contrary to impiety however, the reasoning behind this contention suggests that "sin consists of behaviour which is in opposition to divine reason, not insofar as it is divine, but rather inasmuch as it is right."[185] Thus, "if by some impossible means divine reason or God Himself did

[180] Leonard Besselink, "The Impious Hypothesis Revisited", *Grotiana,* Vol.9, (1988), pp.3-63; M.B. Crowe, "The Impious Hypothesis: A Paradox in Grotius?", in *Grotius, Pufendorf and Modern Natural Law,* ed. Knud Haakonssen, (Aldershot: Ashgate, 1999), pp.3-34; Javier Hervada, "The Old and the New in the Hypothesis 'Etiamsi daremus' of Grotius", *Grotiana,* Vol.IV, (1983), pp.3-20.

[181] *ibid.*, pp.45-57.

[182] Hervada, p.14.

[183] *ibid.*

[184] *ibid.*

[185] *ibid.*

not exist, or if divine reason were not right, there would be sin if the action was committed were contrary to the right reason of men or of angels."[186] As Hervada notes, a similar version of the impious hypothesis also appears in the works of Vitoria, Molina, de Soto, Medina and Suarez, although is extended in the works of Gabriel Vazquez. Thus, according to Vazquez the moral order is determined not by divine reason but by the very nature of God himself. By extension, "the contents of Natural Law, rather than in divine reason, are found in man's nature"[187] thereby facilitating the hypothesis that its central precepts would remain even in the impossible situation where God could be shown not to exist.

On the first point of contention debate is dominated by two main perspectives. As Mary Clare Segers writes, the "standard or "orthodox" interpretation of Grotius' natural law stresses his emancipation of jurisprudence, and especially international law, from theology and from the denominational interpretations of churchmen and theologians."[188] Conversely, the "'revisionist' argument is that Grotian natural law theory is not secular because Grotius retains theological premises in his doctrine."[189] Segers' thesis presents two arguments centering around Grotius' supposed 'secularisation' of natural law. The first contends that "Grotius' natural law theory does not depend on theological presuppositions regarding a Divine Lawgiver, and that he bases natural law upon psychological propositions regarding

[186] *ibid.*

[187] *ibid.*, p.17.

[188] Mary Clare Segers. *Hugo Grotius and secular natural law,* (PhD Thesis) (Ann Arbor: University Microfilms, 1977), p.7.

[189] *ibid.*

the nature of man as rational and social."[190] As such, his natural law theory is viewed, in this regard, as being cognisant with that of Vazquez discussed above. Seger's second argument maintains that Grotius incorporated two distinct conceptualisations of natural law in his works; natural law 'strictly speaking', "the minimum level of morality without which no society could survive" and natural law 'broadly speaking'.[191] This broadly based natural law incorporates a range of moral principles that are distinctly Christian in orientation and will be discussed in the following section.

Thus, far from constituting its 'secularisation', by presenting a two-tier model of natural law, Grotius clearly retains the position of God in the establishment of natural law. In particular, he continues to write that "it follows that we must without exception render obedience to God as our Creator, to Whom we owe all that we are and have; especially since, in manifold ways, He has shown Himself supremely good and supremely powerful, so that to those who obey Him He is ale to give supremely great regards, even rewards that are eternal, since He Himself is eternal."[192] Indeed, it appears that Grotius' apparent 'impious' hypothesis serves another purpose. By establishing that these fundamental principles of nature would hold true even in the absence of God, here understood in the Christian sense, Grotius ensures that those of different denominations as well as those who are not of the Christian faith can, nonetheless, adhere to the laws of war and peace he is

[190] *ibid.*, p.8.

[191] *ibid.*, p.8-9.

[192] Grotius, *DJB,* Prolegomena 11, p.13.

advocating. As Vermeulen and Van Der Wal argue, the impious hypothesis therefore has "nothing to do with a secularisation of natural law...[but] expresses that the content of this law is not contingent, that it does not depend on an arbitrary will – not even on the Divine Will – but consists of an immutable system of rules with autonomous validity."[193] Indeed, this point is confirmed with Grotius' argument that "[t]he law of nature, is unchangeable – even in the sense that it cannot be changed by God."[194] However, that God is central to Grotius' understanding of law is made clear with his citation of Marcus Aurelius' claim that "He who commits injustice is guilty of impiety", thus confirming that law is, according to his reasoning, ultimately derived from God."[195] As will be discussed in more detail in the following chapter, claims that Grotius was responsible for the 'secularisation' of natural law can be most convincingly attributed to Samuel Pufendorf and Jean Barbeyrac.[196]

As will be seen in the following section, it is on this theoretical foundation of the law of nature that Grotius bases his discussion of the just causes of war and, in doing so, completes his defence of both the Dutch East India Company and the Dutch Revolt.

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[193] Vermeulen and Van Der Wal, p.71.

[194] Grotius, *DJB*, I.I.X.5, p.40.

[195] *ibid.*, Prolegomena 12, p.14.

[196] Barbeyrac quoted in James St Leger, p.38.

War

Following Cicero, Grotius defines war as a "contending by force."[197] As such, it is "not a contest but a condition", giving rise to claims in the early twentieth century that Grotius was the "originator of the doctrine of war as status."[198] However, Grotius is less concerned with the nature of war in general than with its regulation according to the principles of the just war. Despite its seemingly singular character, the just war tradition, like the 'Grotian tradition', is not a single tradition of thought but a set of interweaving traditions sharing both points of convergence and divergence throughout the extensive period of its evolution. As Paul Ramsey argues therefore, the just war tradition "cannot be dealt with all in one lump, as if it were a simple system of the moral rules for the classification of cases"[199] and, as such, must be considered in the explicit terms specified by its individual proponents. However, common to all such traditions is the concept of just war itself, understood to be a device simply used to indicate both the just causes of war *(jus ad bellum)* and the just conduct of parties in war *(jus in bello).*

The just war

Grotius' conceptualisation of the just causes of war appears in three works spread chronologically throughout his life; *Commentarius in Theses, De Jure Praedae* and *De Jure Belli ac Pacis.* However, as with much of *De Jure Belli ac Pacis'* content,

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[197] Grotius, *DJB,* I.I.II, p.33.

[198] *ibid.;* Onuma Yasuaki, "War", in *A Normative Approach to War,* p.62; A.D. McNair, "The Legal Meaning of War and Relations of War to Reprisals", *TGS,* Vol.11, (1925), p.31-33.

[199] Paul Ramsey, "The Just War According to St Augustine", in *Just War Theory,* ed. Jean Bethke Elshtain, (Oxford: Basil Blackwell, 1992), p.8.

the substantive principles outlined in this discussion appeared in an almost identical format in the earlier work *De Jure Praedae.* In fact, it is in this earlier work that Grotius fully explains his own derivation of the just war and its inherent connection to natural law.

Grotius' treatment of the just war is confined exclusively to the just causes of war in *De Jure Praedae* and begins from the premise that war is not necessarily "in conflict with the law of nature."[200] Thus, he writes in *De Jure Praedae* that:

> God wills that we should protect ourselves, retain our hold on the necessities of life, obtain that which is our due, punish transgressors, and at the same time defend the state, executing its orders as well as the commands of its magistrates....Thus it is God's Will that certain wars should be waged; that is to say (in the phraseology of the theologians), certain wars are waged in accordance with God's good pleasure. Yet no one will deny that whatsoever God wills, is just. Therefore, some wars are just; or, in other words, it is permissible to wage war.[201]

Grotius' defence of war itself is consequently derived from his theory of natural law as outlined above. In particular, in accordance with the claim that "He who bestowed upon living creatures their very existence, bestowed also the things necessary for existence", Grotius argues that defence of those things necessary for existence is a legitimate cause for war as ordained by God.[202] What follows is that if

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[200] Grotius, *DJB,* I.II.I, p.51.

[201] Grotius, *DJP*, p.31-32.

[202] *ibid.*, p.11.

just cause be found, all action necessary to achieve the ends that deemed the action legitimate in the first place is also permitted. As will be seen shortly however, in *De Jure Belli ac Pacis*, Grotius tempers this licence with calls for moderation *(temperamenta)* in the conduct of war.

Having established that, in accordance with the law of nature, some wars are lawful, Grotius then sets about specifying who has the authority to declare war and herein lies a significant point of divergence in the arguments presented in *De Jure Praedae* and *De Jure Belli ac Pacis.* In the earlier work, Grotius argues against Aquinas' claim that a just war requires "the authority of the ruler, by whose commands the war is to be waged; it is not the business of a private individual to declare war, because he can seek redress of his rights from the tribunal of his superiors."[203] He writes, defending the actions of the Dutch East India Company that "*private wars are justly waged by any persons whatsoever, including cases in which they are waged in conjunction with allies or through the agency of subjects.*"[204] However, in *De Jure Belli ac Pacis*, the right to make war and peace is specified as a mark of sovereignty.[205]

De Jure Praedae then continues to specify the four just causes of war as derived from the nine rules and thirteen laws of nature introduced in the *Prolegomena*. "The

[203] Saint Thomas Aquinas, *Summa Theologiae II-II,* in *On Law, Morality and Politics,* ed. William P. Baumgarth and Richard J. Reagan, (Indianapolis: Hackett Publishing Company, 1988), p.221.

[204] Grotius, *DJP,* p.62.

[205] Grotius, *DJB,* p.61.

first of these," he writes, is based on the first law of nature and "is self-defence."[206] In accordance with the second law of nature, that "[i]t shall be permissible to acquire for oneself, and to retain, those things which are useful for life," the second just cause of war is "defence of one's property."[207] The third cause, Grotius argues, "one that a great many authorities neglect to mention – turns upon debts arising from a contract or from some similar source."[208] This cause of war is amalgamated with the second in *De Jure Belli ac Pacis* to constitute the "obtaining of that which belongs to us or is our due."[209] Finally, "[t]he fourth cause arises from wrongdoing, and from every injury – whether word or deed – inflicted with unjust intent" and is derived from the individual's right to inflict punishment established above.[210]

Both *De Jure Praedae* and *De Jure Belli ac Pacis* focus heavily on punishment as a just cause of war, the latter work devoting an entire lengthy chapter to its elaboration, much of which is derived from the works of Augustine, "that supreme authority on piety and morals."[211] As Grotius writes;

> When, however, Augustine said, 'Those wars are wont to be defined as just which avenge wrongs,' he used the word 'avenge' in a rather general way to mean 'exact requital for'. This is shown by what follows, for therein we find not a logical subdivision but a citation of examples: 'War, then, ought to be

[206] Grotius, *DJP*, p.67.

[207] *ibid.*

[208] *ibid.*

[209] Grotius, *DJB*, II.I.II, p.171.

[210] Grotius, *DJP*, p.67.

[211] *ibid.*, p.4.

undertaken against that people and state which has either neglected to exact punishment for wrongs done by its members, or to return what has been wrongfully taken away.'[212]

According to Grotius, punishment holds a three-fold advantage; admonition or correction, the protection of others, and deterrence.[213] Controversially, the first form of punishment "may be exacted by any one at all according to the law of nature" but cannot include the death penalty.[214]

Having elaborated upon the four just causes of war, Grotius is then left in *De Jure Praedae* to establish that both the Dutch East India Company and the state of Holland were in fact entitled to engage in the wars they did. Relying on the earlier claim that private individuals can justifiably enter into a war, he first demonstrates "the justness of the case if the war were private" before moving on to arguments demonstrating "the justness of the case if the war were public."[215] With regard to the first just cause of war, self-defence, he argues that the Dutch were simply defending themselves against attacks made on their vessels by the Portuguese and as such, this argument can also be placed within the bounds of the second just cause of war, defence of property. However, Grotius also argues, in the first category, that the Dutch were also acting in defence of their allies, the East Indian Kingdom of Johore that had suffered under Portuguese rule. Also, in terms of defence, and of

[212] *ibid.* p.172.

[213] *ibid.*, p.469f.

[214] *ibid.*, p.470.

[215] *ibid.*, p.63 & 85.

great pertinence to the justification of the Dutch Revolt, is the claim that the Dutch were defending their mark of sovereignty against Portuguese and Spanish attempts to usurp it. On the third just cause of war, failure to honour contracts, as mentioned above, Grotius cites the Great Privilege of Mary of Burgundy and Philip II's actions in changing the laws of the Netherlands against the statutes. Finally, under the banner of punishment stand a range of arguments justifying the Dutch East India Company's actions and the Dutch Revolt. Thus, Grotius argues at one time or another that the Dutch were inflicting punishment on the Portuguese/Spanish for injuries inflicted on them during the reign of the Duke of Alva, for injuries inflicted upon the East Indian peoples of the Kingdom of Johore, for not punishing the Duke of Alva themselves for the injuries he inflicted on the Dutch, for Philip's failure to defend the peoples commended to his care as per the statutes, and for breaching the law of nature and nations in attempting to restrict the freedom of the seas.

War on behalf of others

De Jure Belli ac Pacis concludes its discussion of the just causes of war by elaborating upon whether or not war on behalf of others can be considered just. At heart, this discussion is derived from Grotius' assertion that the 'right of resistance' is not a just cause of war. He writes;

> By nature all men have the right of resisting in order to ward off injury, as we have said above. But as civil society was instituted in order to maintain public tranquility, the state forthwith acquires over us and our possessions a greater right, to the extent necessary to accomplish this end. The state,

> therefore, in the interest of public peace and order, can limit that common right of resistance.[216]

Indeed, Grotius further solidifies this argument by demonstrating that rebellion and resistance were not permitted in Hebraic law, Holy Writ or in the practices of the early Christians.

In order to justify this point of view, Grotius includes a critical caveat, that permits war to be conducted on behalf of others. Similarly, the passage pertaining to the question of whether and under what circumstances it is permissible to undertake war on behalf of others, from which contemporary theorists have drawn a doctrine of 'humanitarian intervention' is similarly scarcely discussed. The particular passage of *De Jure Belli ac Pacis* reads;

> If, however, the wrong is obvious, in case some Busiris, Phalaris or Thracian Diomede should inflict upon his subjects such treatment as no one is warranted in inflicting, the exercise of the right vested in human society is not precluded...If, further, it should be granted that even in extreme need subjects cannot justifiably take up arms (on this point we have seen that those very persons whose purpose was to defend the royal power are in doubt), nevertheless it will not follow that others may not take up arms on their behalf.[217]

However, although it is usually omitted from discussions of this passage, Grotius is here concerned with justifying his previous and more central claim that subjects are

[216] Grotius, *DJB*, I.IV.II.1, p.139.

[217] *ibid.*, II.XXV.VIII,2-3, p.584.

not entitled to resist the commands of their rulers. Furthermore, citing Seneca, Grotius reasons that "making war upon one who is not one of my people but oppresses his own," for the "protection of innocent persons," is not primarily concerned with justifying 'humanitarian' action, but is simply a function of the right of states to inflict punishment upon others according to the precepts of natural law.[218] However, Grotius tempers this with the further caveat that "wars which are undertaken to inflict punishment are under suspicion of being unjust, unless the crimes are very atrocious and very evident."[219] Critically then, although Grotius recognises instances in which it may be permissible to intervene in the affairs of another sovereign state, the central subject of both the action and his writing is the state or ruler to be punished, and not the peoples who will, as a result, be protected.

The other passage of Grotius' work often held to illustrate his understanding of the concept of humanitarian intervention is found in *De Jure Praedae.* The passage which seems to indicate that Grotius was in favour of humanitarian intervention argues that;

> ...not only is it universally admitted that the protection of infidels from injury (even from injury by Christians) is never unjust, but it is furthermore maintained, by authorities who have examined this particular point, that alliances and treaties with infidels may in many cases be justly contracted for the purpose of defending one's own rights.[220]

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[218] *ibid.*, II.XXV.XIII.4, p.584.

[219] *ibid.*, II.XX.XLIII.3, p.508.

[220] Grotius, *DJP*, p.315.

Considered in isolation it is certainly possible to infer from this a notion of intervention that has at least some degree of humanitarian concern as its driving force. However, when considered in light of the following passage, Grotius' true intentions become clear;

> In any case, it is certain that the cause of the King of Johore was exceedingly just. For what could be more inequitable than a prohibition imposed by a mercantile people upon a free king to prevent him from carrying on trade with another people?[221]

Thus, Grotius justifies the actions of the Dutch East India Company in seizing the Portuguese ship by inferring that, in doing so, they were both punishing the Portuguese for preventing the King of Johore from trading with the Dutch – a right Grotius considers inalienable according to the law of nations[222] - and defending the East Indian king's rights. Claims that this passage constitutes a defence of the right of humanitarian intervention also appear to be derived from Grotius' further claim that;

> Both the King of Johore and the [East Indian] nations elsewhere mentioned by us, are being ravaged by the Portuguese with slaughter and rapine on no other pretext than this, that the said ruler and nations granted admittance to the Dutch.[223]

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[221] *ibid.*

[222] *ibid.* XII, p.216. See also *ML*.

[223] *ibid.*, XII, p.314-5.

However, although Grotius turns to a humanitarian pretext here, the actions he is describing are not an instance of humanitarian intervention but the workings of an alliance between Holland and the Kingdom of Johore. Indeed, at no point in the ensuing discussion is there mention of humanitarian atrocities committed by the King of Johore against his own people. With this in mind, Grotius' argument must be seen purely as looking to ensure both the continued right of the Dutch East India Company to trade with the Kingdom of Johore, and its right to retain the booty seized from the Portuguese vessel in question, in accordance with the right of punishment specified by the just war tradition. Indeed, it is to the final overarching tier of Grotius' moral scheme that contemporary theorists will find evidence of his humanitarian sentiments.

Love

Despite expending a significant amount of time and energy constructing a moral code based on a minimal morality specified by the law of nature and presented in the form of the just war tradition, the law of love often trumps more conventionally conceived notions of justice and morality in Grotius' work.[224] As Tanaka Tadashi points out, throughout *De Jure Belli ac Pacis*, Grotius refers to love, the law of love and the rules of love, using the terms *caritas* and *delectio* interchangeably.[225]

[224] Shaver, p.63.

[225] Tadashi, "Grotius's Concept of Law", p.48. For example, *caritas* is referred to in the following passages; III.II.VI, p.447; III.XI.II, p.153; III.XIII.IV, p.542; *delectio* in these; II.XXIV.II.3, p.402; II.I.IV.2, p.173.

Although he "does not provide a general explanation of their sources or contents" a number of instructive facets of Grotius' understanding of the law of love can be gleaned from a number of passages of his work.[226] In particular, his most lucid exposition of the subject states that "the rules of love are broader than the rules of law" and equates the failure to adhere to the law of love with 'heartlessness'.[227]

The law of love is fundamentally dictated by the law of the Gospel, the *jus evangelicum*, and enjoins individuals to put "consideration for others on a level with consideration for [themselves]."[228] As such, it is an expression of the well known teaching to 'do unto others as you would have them do unto you'. Taking the evangelical foundations of the law of love one step further, Grotius continues by arguing that "[t]he teachings of Christ in regard to loving and helping men ought, therefore, to be carried into effect unless a greater and more just love stand in the way."[229] By this, Grotius means that the laws of love enjoined by Christ ought to be applied to all areas of conduct and, given his earlier contention that states and individuals are morally equivalent, it stands to reason that he is also referring to states in this sense. Indeed, that states are included in the law of love is made clear with the argument that warring parties ought to love their enemies, on the grounds that the "reasons for refraining from war have their origin in the love which we either owe to our enemies or rightly manifest toward them."[230]

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[226] *ibid.*

[227] Grotius, *DJB*, III.XIII.IV.1, p.759.

[228] *ibid.*, II.I.IV.2, p.173.

[229] *ibid.*, I.II.VIII.10, p.75-6.

[230] *ibid.*, II.XXIV.II.3, p.569-570.

However, the logical extension of Grotius' reliance on the law of the Gospel as the basis for the law of love presents him with two serious problems. First, by applying Christ's teachings to the conduct of war, he is faced with the problem of how to reconcile notions of Christian pacificism with the reality that Christians engage in wars. Indeed, Grotius does concede that the "law of the Gospel has made such action in self-defence altogether unpermissible; for Christ bids us submit to a blow rather than do harm to an aggressor."[231] Although a Christian should 'turn the other cheek', he maintains that "it is in the love of the innocent man", also derived from the Gospel, "that both capital punishment and just wars have their origin", thereby providing grounds on which Christians can go to war.[232] However, this still leaves the question of how to reconcile Grotius' earlier claim that, according to the just war's natural law underpinnings, all force necessary to achieve a just cause is permitted. Still more problematic for the central aim of his work, the realisation of a universal morality, is the question of how to make the law of love applicable to all of humanity. For, although Grotius certainly believes that the law of the Gospel is applicable to all mankind, he must surely have recognised that those outside the Christian faith would not concur with his view.

Rather than face these problems head on, Grotius simply fudges the issue. In particular, as Tadashi points out, the 'law of love', as conceived above, is used interchangeably with the 'rules of humanity' (*regulae humanitatis*), 'natural equity'

[231] *ibid.*, II.I.X.1, p.178.

[232] *ibid.*, I.II.VIII.10, p.75.

(*aequitas naturalis*), the 'duty of Christians' (*officium Christiani hominis*) and a notion of 'internal justice' (*interna justitia*), in an attempt to appeal to a higher notion of humanity *(humanitas*). He writes that "these concepts in part overlap with law, but they are more extensive; by appealing to them, Grotius extends the scope of law to vast peripheral domains."[233] Indeed, as Grotius writes, "I do not doubt that to human law also there can be applied what love under other circumstances would commend."[234] Critical to this attempt to infuse strict human law with the law of love however, is the further notion of 'internal justice' mentioned above.

Although it appears on numerous occasions in his work, particularly Book III of *De Jure Belli ac Pacis*, Grotius does not clearly or consistently define precisely what 'internal justice' entails.[235] As one of the only writers to address this aspect of his Grotius' work explains, "[t]he things which are permissible according to internal justice in a just war" are identical to the three just causes of war discussed above.[236] Conversely, as Grotius himself explains, "[w]hat is done by reason of an unjust war is unjust from the point of view of moral injustice *(interna injustitia).*"[237] What is certain is that internal justice is, in once instance at least, derived directly from a notion of conscience and is also used interchangeably with a notion of moral justice.[238] Thus, although his prior theorisation of the just war authorises the use of

[233] Tadashi. "Grotius's Concept of Law", p.49.

[234] Grotius, *DJB,* I.IV.VII.2, p.149.

[235] See III.XI.II, p.723; III.XII.I.1, p.745; III.XIII.I.2, p.757.

[236] Tadashi, *"Temperamenta* (Moderation)", p.296.

[237] Grotius, *DJB,* III.X.III, p.718-19.

[238] *ibid.*, III.XI.II, p.723.

all necessary force, he appeals to the individual conscience understood in terms of internal justice and co-extensive with the law of love.

Having spent most of *De Jure Belli ac Pacis* elaborating upon the just causes of war, Grotius then spends sixteen chapters of the third book renouncing almost all of the sanctions previously permitted. He writes;

> I must retrace my steps, and must deprive those who wage war of nearly all the privileges which I seem to grant, yet did not grant them. For when I first set out to explain this part of the Law of Nations I bore witness that many things are said to be 'lawful' or 'permissible' for the reason that they are done with impunity, in part also because coactive tribunals lend to them their authority; things which, nevertheless, either deviate from the rule of right (whether this has its basis in law strictly so called, or in the admonition of other virtues), or at any rate may be omitted on higher grounds or with greater praise among men.[239]

With regard to the destruction of property, Grotius prohibits the despoiling of both sacred and consecrated things on the grounds that "these cannot be violated without contempt for human feeling."[240] However, Grotius' greatest problem is with the right to kill others. In particular, his pronouncements about the right to kill are tempered by a particular regard for human life. Thus, referring to the law of love, he argues that individuals ought not to be killed for the sake of property;

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[239] *ibid.*, III.X.I.1, p.716.

[240] *ibid.*, III.XII.VI, VII, p.751 & 753.

> ...it may happen that those who wish by force to hinder the enforcement of a right may be killed, not intentionally but accidentally. But if this can be foreseen, we have shown elsewhere that we ought rather to surrender to furthering of the right, in accordance with the law of love. According to this law, particularly for Christians, the life of a man ought to be of greater value than our property.[241]

In a similar vein, Grotius argues in a later passage that "the killing of a man on account of transitory things, even if it is not at variance with justice in a strict sense, nevertheless is not in harmony with the law of love."[242] Thus, killing must be done with humanity and in accordance with moral or internal justice, *justitia interna.* In practical terms, this entails sparing women, children and old men,[243] priests, ministers and scholars,[244] farmers,[245] merchants,[246] and prisoners of war.[247] Furthermore, Grotius argues that "[i]t is right to spare those who are guilty, if there number is very great", thereby demonstrating the same clemency afforded individuals by God.[248] Indeed, the concept of clemency appears a number of times in *De Jure Belli ac Pacis*, Grotius going so far as to suggest both that "the conquered should be treated with clemency" and that "[p]unishment may often be

[241] *ibid.*, III.II.VI, p.628.

[242] *ibid.*, III.XI.II, p.723.

[243] *ibid.*, III.XI.IX, p.734.

[244] *ibid.*, III.XI.X.2, p.737.

[245] *ibid.*, III.XI.XI, p.737.

[246] *ibid.*, III.XI.XII, p.737.

[247] *ibid.*, III.XI.XIII, p.737.

[248] *ibid.*, III.XI.XVII, p.742.

remitted justly even to enemies who have deserved death."[249] Such is the value of human life that Grotius believes it preferable to be captured and enslaved than to fight to the death. In this vein, slavery is considered a form of charity, a "lesser cruelty", when proposed as an alternative to "the slaughter of unfortunate men."[250]

In accordance with his desire to preserve human life and limit the horrors of war, Grotius introduces the notion of *temperamenta*, or moderation, and applies it to the conduct of war. In doing so, he devotes chapters of Book III of *De Jure Belli ac Pacis* to arguments in favour of moderation in 'laying waste and similar things',[251] in regard to captured property,[252] in regard to prisoners of war,[253] in acquisition of sovereignty,[254] and in case of no postliminy,[255] Chapter XI going to far as to argue that the "right of killing enemies, in just war, [ought] to be tempered with moderation and humanity."[256] As such, Grotius argues against the 'unnecessary effusion of blood';

> ...all engagements, which are of no use for obtaining a right or putting an end to a war, but have as their purpose a mere display of strength, that is, as the Greeks say, 'an exhibition of strength rather than a combat against the enemy', are incompatible both with the duty of a Christian and with

[249] *ibid.*, III.XV.XII, p.776; III.XI.VII, p.731.

[250] *ibid.*, III.VII.IX.1, p.696.

[251] *ibid.*, III.XII, p.745.

[252] *ibid.*, III.XIII, p.757.

[253] *ibid.*, III.XIV, p.767.

[254] *ibid.*, III.XV, p.770.

[255] *ibid.*, III.XVI, p.778.

[256] *ibid.*, III.XI, p.722.

> humanity itself. Consequently rulers, who must render account of the useless shedding of blood to them in whose name they bear the sword, should strictly forbid such combats.[257]

As James Turner Johnson writes then, "both proportionality...and good wishes (deriving from charity and historically revealed in Christian thought and practice" limit the fully justified right of self-defence."[258] However, a pertinent caveat applies to the application of *temperamenta* and *caritas* that highlights the fundamental distinction between the highest tier of Grotian morality and the rest. Here Grotius maintains that "only *Christians* are bound by the latter restriction, while *all peoples* are bound by the former."[259] As Johnson explains, this is fundamentally due to the fact that Grotius thought that *caritas* formed part of "a higher morality accessible only through the gift of divine grace."[260] However, as seen above, by equating it with internal justice and hence the individual conscience, Grotius nonetheless manages to argue that the law of love is an essential element of humanity that ought to be reflected in the functioning of human law.

Conclusion

The life and works of Hugo Grotius are marked by a number of significant tensions that, in many ways, have informed the very construction of his particular moral

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[257] *ibid.*, III.XI.XIX, p.743-744.

[258] James Turner Johnson, "Grotius' Use of History and Charity in the Modern Transformation of the Just War Idea", *Grotiana,* Vol.IV, (1983), p.29.

[259] *ibid.*

[260] *ibid.*, p.32.

scheme. In the first instance, his work is marked by a tension between a self-professed hatred of war and the recognition that its limitation requires, to some extent at least, an acceptance of the reality of war. In a similar vein, Grotius is also torn between the attractiveness of the just war tradition, derived from a history of scholarship that he holds in high esteem, and his aversion to war at all. In large part, this tension is played out with his endorsement of the just causes of war and subsequent calls to *temperamenta* that seek to limit even just wars. As made evident in the biographical discussion of his life, Grotius' work is also marked by the contending desire to identify a universal morality according to which all international relations can be regulated and his profound devotion to Christianity. Indeed, on a broader scale, although in attempting to achieve a universal legal system Grotius sought to overcome the problems inherent in the sectarianism of seventeenth century Europe, the fact remained that, though the power of the Catholic church was in decline, Christianity remained a dominant feature of European politics. In this then, Grotius is seen to play a delicate balancing act between the desire for universalism and respect for Christianity. Finally, and as seen in the final section of this chapter, a tension is also apparent in Grotius' work between his overwhelming desire to apply 'strict' law to the conduct of war and his equally strong aspiration for the promotion of the law of love.

Although it does not satisfactorily resolve all, or even any of these tensions, the solution to Grotius' contending beliefs and aspirations is found in his three-tiered moral scheme. Indeed, as demonstrated in this chapter, a multilayered system of

morality is evident in Grotius' work that, despite being based on a platform of secular and common principles is, in its highest form, ecclesiastically inspired and yet driven by a notion of common humanity. Thus, at its most basic, irrefutable level, Grotian morality is a minimal morality derived from the law of nature and which, at heart, implores individuals and states to refrain from injuring others or seizing their property. Mediating between these upper and lower tiers of morality are the precepts of the just war tradition which provide the essential vehicle for Grotius' attempt to, by slightly devious means, actually induce a far higher morality in state conduct than that implored by the law of nature. Thus, Grotian morality is secular, yet remains true to the fundamental principles of Christianity, it abhors war, but provides a set of moral guidelines for its moderation nonetheless and, by appealing to a higher notion of 'humanity', sets the law of love as a higher morality standing over and above law as strictly defined and applied to the conduct of war.

As will be seen in the following chapters of this thesis, it is this three-tiered moral scheme that has cemented Grotius' longevity in International Relations and Legal scholarship and formed the ultimate foundations of the most prominent Grotian traditions of the twentieth century. In particular, as made evident in the following chapter, following the decline of *De Jure Belli ac Pacis* at the hands of Vattel's *Le Droit des Gens*, James Kent and Henry Wheaton turned to Grotius on account of the manner in which his law of nations was infused with an explicitly Christian morality. Similarly, as discussed in Chapter Five, in the early twentieth century, writers such as Cornelius van Vollenhoven and J.L. Brierly, drew upon a notion of

'Grotian morality' derived from the law of love and the law of nature respectively. Most significant of all however, is the first formal incarnation of the 'Grotian tradition' in the work of Hersch Lauterpacht that, despite rejecting the outwardly Christian foundations of the third layer of Grotius' moral scheme, was explicitly conceived as a tradition of moral thought.

It has also been made particularly apparent in this chapter that those concepts deemed central to the Grotian traditions of the twentieth century, in particular 'international society' and 'humanitarian intervention', did not feature highly in Grotius' actual works. Thus, although Grotius writes, with what Martin Wight terms a 'fruitful imprecision', of a range of ideas vaguely cognisant with an early notion of international society, for example, *magna illa universitas* (that universal society), *mutua gentium inter se societas* (mutual society of nations), *major illa gentium societas* (that greater society of nations) and *humana* societas (human society), none of these concepts bear a great deal of resemblance to the conceptualisation of 'international society' in the twentieth century.[261] As will be seen in the following chapters, the modern notion of international society with which Grotius has been erroneously associated only emerged in the scholarship of the nineteenth century that followed the Congress of Vienna.

[261] Martin Wight, "Western Values in International Relations", in *Diplomatic Investigations: Essays on the Theory of World Politics,* ed. Herbert Butterfield and Martin Wight, (London: George Allen & Unwin, 1966), p.102.

Furthermore, Grotius' status as the 'father of humanitarian intervention' seems, in a substantive sense at least, highly questionable. Considered slightly differently however, claims of Grotius' paternity also imply that he was in some way the first writer to either understand the central principles of the concept or, more stringently, conceive of a distinct doctrine of humanitarian intervention. Grotius' position is similarly questionable on both these counts. As Terry Nardin points out, the concept of humanitarian intervention also appeared in a similarly minimal, yet discernible sense in the works of a range of writers prior to Grotius, including Francisco de Vitoria, Bartolomé de Las Casa, Luis Molina and Domingo de Soto.[262] However, what these notions of humanitarian intervention lack that is critical to a modern conception of the practice, is an understanding of the sovereign state as the object of intervention. Thus, it was not until Christian von Wolff's *Jus Gentium Methodo Scientifica Pertractatum* of 1747, discussed in the following chapter, that a notion of humanitarian intervention embedded in the modern notion of state sovereignty and the principle of non-intervention appeared.[263]

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[262] Terry Nardin, "The Moral Basis of Humanitarian Intervention", *Ethics and International Affairs.* Vol.16, No.1, (2002), p.60-61. Indeed a distinct 'humanitarian' impulse is evident in Las Casas' claim that "[a]ll who can do so are held by the natural and divine law to defend any and all persons from such injuries." Bartolomé de Las Casas, *In Defense of the Indians: The Defense of the Most Reverend Lord, Don Fray Bartolome de Las Casas, of the Order of Preachers, Late Bishop of Chiapa, Against the Persecutors and Slanderers of the Peoples of the New World Discovered Across the Seas,* trans. & ed. Stafford Poole, (DeKalb: Northern Illinois University Press, 1974), p.37.

[263] Christian von Wolff, *Jus Gentium Methodo Scientifica Pertractatum,* trans. Joseph H. Drake, (Oxford: Clarendon Press, 1934), 257-258, p.131-132.

Finally, and of immediate importance to the genesis of the first historical incarnations of the 'Grotian tradition' that began to appear almost immediately after his death, contrary to his variable characterisation in contemporary International Relations scholarship, Grotius is, first and foremost, a natural law theorist. This does not imply that he did not also entertain a notion of a positive law of nations in his works, but rather that the law of nature remained the dominant element of the law of nations. In this, Grotius' allegiance to the central precepts of natural law is structurally similar to those of Samuel Rachel and Richard Zouche, both of whose works are discussed in the following chapter and both of whom, despite promulgating an outwardly positivist approach to the law of nations, retained an element of natural law in their thinking. Thus, as will be seen in the remaining chapters of this thesis, it is Grotius' theory of the law of nature, complete with its principles of minimal morality, that not only constitute the basis of much seventeenth and eighteenth 'Grotian' scholarship, but have inspired elements of the twentieth century incarnations of the 'Grotian tradition'.

IV

The Early 'Grotians' from Samuel Pufendorf to Henry Wheaton

> Natural law no more dropped from the skies in the seventeenth century than did international law, neither did it spring from the ingenious brain of a single human being. It is true that from this period both developed into a more independent conception, though the close relationship between natural law and international law cannot be denied even now.[1]

Although the first analytical incarnation of the 'Grotian tradition' did not appear in an explicitly articulated form until the works of Hersch Lauterpacht in the 1940s, its intellectual antecedents are located at the beginning of the nineteenth century. However, Grotius' status in the history of international political and legal thought was certainly not always assured. By the middle of the eighteenth century, Grotius was generally regarded by European scholars as "old fashioned and out of date."[2] His grand treatise had been superseded by Vattel's *Le Droit des Gens* as the leading authoritative text on the law of nations and Grotius himself had been relegated to the annals of history as the founding father of the emergent 'science of international law'. Indeed, although the stunning success of *De Jure Belli ac Pacis* had seen it

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[1] Van der Molen quoted in Charles Edwards, *Hugo Grotius The Miracle of Holland: A Study in Political and Legal Thought,* (Chicago: Nelson-Hall, 1981), p.24.

[2] Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics,* (Cambridge: Cambridge University Press, 2002), p.101.

"reprinted or translated fifty times between 1625 and 1758", in the following hundred years it was only published twice.[3] With time, Grotius and his followers, Pufendorf and Vattel, would be branded as 'sorry comforters' by the highly influential Immanuel Kant and, with the rise to prominence of positivist legal theory, it would be said that their "philosophically or diplomatically calculated codes do not and cannot have the slightest *legal* force, since states as such are not subject to a common external constraint."[4] Be that as it may, the nineteenth century remains the pivotal century during which the foundations of the Grotian traditions of the twentieth century were laid. Indeed, by the end of the nineteenth century, Grotius' works were gaining popularity once more, paving the way for a massive resurgence of Grotian scholarship that saw the solidification of the 'Grotian tradition' in the early twentieth century.

Central to the revival of Grotius in international legal scholarship was the work of the American international lawyer, Henry Wheaton (1785-1848). Wheaton's *Elements of International Law With a Sketch of the History of the Subject*, first published in 1836 was the first international law treatise written in English and "at

[3] Mark Weston Janis. "American Versions of the International Law of Christendom: Kent, Wheaton and the Grotian Tradition", *Netherlands International Law Review,* Vol.XXXIX, (1992), p.43. See also J.G. Starke, "The Influence of Grotius Upon the Development of International Law in the Eighteenth Century" in *Grotian Society Papers 1972: Studies in the History of the Law of Nations,* ed. C.H. Alexandrowicz, (The Hague: Martinus Nijhoff, 1972), p.163.

[4] Immanuel Kant, "Perpetual Peace" in *Perpetual Peace and Other Essays,* trans. Ted Humphrey, (Indianapolis: Hackett Publishing, 1983), p.116.

once attract[ed] the attention of the whole of Europe."[5] In 1845 he published a *History of the Law of Nations in Europe and America, from the Earliest Times to the Treaty of Washington, 1842,* a similarly popular work in international legal history.[6] In particular, three features of Wheaton's works are of central importance to the development of 'Grotian' scholarship in the nineteenth century. As Edward Keene has spent much of his time discussing, the first is the emergence of the claim that Grotius prefigured or even personally directed the substantive content of the Westphalian Peace Treaties. Here it is apparent that in an attempt to consolidate the history of international legal scholarship to date, international lawyers such as Wheaton and, in England, William Manning,[7] fused two different accounts of the emergence of modern international law, represented most prominently by the works of A.H.L. Heeren and G.F. von Martens.[8] As will be seen in the remaining chapters of this thesis, in doing so, they initiated a myth "more potent than reality,"[9] the pervasiveness of which has continued to inform contemporary Grotian scholarship. In particular, by associating Grotius with the Westphalian Treaties, the case for his later association with the concept of international society is strengthened, albeit on a false premise.

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[5] Lassa Oppenheim, *International Law: A Treatise,* 3rd ed. Ronald F. Roxburgh, (London: Longmans, Green & Co., 1920), p.114.

[6] Henry Wheaton, *History of the Law of Nations in Europe and America, from the Earliest Times to the Treaty of Washington, 1842* (New York: Garland Publishing, 1973).

[7] William Manning, *Commentaries on the Law of Nations,* (London: Sweet, 1839).

[8] Edward Keene, "The reception of Hugo Grotius in international relations theory", *Grotiana,* Vol.20/21, (1999/2000), p.142.

[9] C.G. Roelofsen, "Grotius and the 'Grotian heritage' in international law and international relations: the quartercentenary and its aftermath (circa 1980-90)", *Grotiana,* Vol.11, (1990), p.8.

The second feature of Wheaton's work that is of relevance to the development of the 'Grotian tradition' centers around the notion of 'Grotian morality' that appeared in his works and those of James Kent. In particular, it highlights that while 'Grotian' scholarship was undergoing a period of decline in Europe, the association of Grotius with Christian ethics in international law became central to American interpretations of the law of nations. Finally, the third important feature of Wheaton's work is its three-fold division of the history of international legal thought into the categories of natural and positive law and, combining elements of each, 'mixed' law. Although this scheme originated in the eighteenth century, existing in an embryonic form in the work of Emerich de Vattel, it was only with the first international legal textbooks of the nineteenth century that it became solidified in international legal thought. Thus, although the intermediary category standing between the dominant natural and positive legal traditions was labeled here as 'mixed', it is this pattern of thought that later became the analytical variant of the 'Grotian tradition' that appears in Hersch Lauterpacht's work.

However, this pattern of categorisation is struck by a serious epistemological problem at the outset. Although Wheaton's history of international law begins with the works of Hugo Grotius, the 'founder' of the 'science' with which he is concerned, he seems uncertain as to whether Grotius ought to placed in the 'natural

law' tradition alongside Thomas Hobbes and Samuel Pufendorf.[10] Indeed, in a similar manner, the natural law category of Oppenheim's formulation includes Hobbes, Pufendorf and the French theorist and translator of Grotius' and Pufendorf's major works, Jean Barbeyrac, while the 'Grotians' are said to include Christian von Wolff, Emerich de Vattel, Henry Wheaton and William Manning.[11] However, as made clear in the previous chapter, Grotius was himself avowedly a natural law theorist and hence, according to this scheme, does not reside within the 'Grotian' category. Similarly, and equally absurdly, as a member of the 'natural law tradition', Grotius' most self-conscious follower, Samuel Pufendorf, is not considered a 'Grotian'. In light of what is constituted by an historical tradition, this exclusion is particularly problematic for, as is demonstrated in this chapter, Pufendorf clearly stands in a direct and self-conscious line of transmission from Grotius.

This chapter consequently argues that, contrary to the analytical constructions of the twentieth century that distinguish the Grotian and natural law traditions, in its early historical incarnations, those patterns of thought that emanated from Grotius were explicitly traditions of natural law. What is more, rather than existing as a singularly conceived tradition, a number of interweaving patterns of transmission can be discerned originating with Grotius and retaining an explicit association with him. The first section of this chapter therefore traces the development of Grotian

[10] Henry Wheaton, *Elements of International Law*, ed. John Grafton Wilson, (Oxford: Clarendon Press, 1936), I.I.2, p.3.

[11] Oppenheim, p.106.

scholarship from Grotius to Pufendorf and on to Jean Barbeyrac and, in doing so, demonstrates that although Pufendorf explicitly derived his theory of the law of nature from Grotius, he sought to infuse it with a distinctly voluntarist moral system. In addition, this section also introduces the range of criticisms leveled at Pufendorf's work by Wilhelm Gottfried von Leibniz that exerted a significant influence on the later works of Christian von Wolff and Emerich de Vattel. The second section is consequently concerned with the works of Wolff and Vattel and it is here that we see the emergence of concepts that are considered stereotypically 'Grotian' in twentieth century scholarship. In particular, in Wolff we see the distinction between the 'necessary' and 'voluntary' law of nations, later transposed to form the 'natural' and 'positive' law traditions and, the beginnings of a notion of 'international society' in the form of the *civitas maxima.* Finally, the third section discusses the three-fold contribution of Henry Wheaton to the development of the 'Grotian tradition' and, in particular, the resurgence of interest in 'Grotian morality' in nineteenth century American scholarship.

Samuel Pufendorf

Despite his categorisation within the bounds of the natural law tradition, Samuel Pufendorf (1632-1694) stands in a self-consciously identified line of transmission from the works of Hugo Grotius, thereby rendering him a member of an historically constituted 'Grotian tradition'. In the first instance, this is established by reference

to the praise Pufendorf affords Grotius in the preface to *De Jure Naturae et Gentium* in which he refers to himself as Grotius' 'Son':

> Indeed, it has been believed not unjustly that first place has thus far been held by Hugo Grotius, who was apparently the first to call his generation to the consideration of that study [natural law], and was also so grounded in it, that in a large part of the field he has left all others nothing further than the task of gleaning after him. But, however much we cherish the fame of that man, so much so that we have been accorded the special designation of his 'Son', it must after all be acknowledged that he has entirely omitted not a few matters, some he has accorded but a passing touch, and introduced some other matters, which prove that after all he was only a man.[12]

Thus, despite identifying himself as an intellectual descendant of Grotius, Pufendorf acknowledges the limitations of Grotius' natural law theory. In particular, he is concerned with Grotius' inability to satisfactorily reconcile the dual human instincts of self-preservation and sociability, his moral realism and, derived from this, his failure to include a strong notion of obligation in his theory of the law of nature.

However, Pufendorf's criticisms of Grotius' work poses him with somewhat of a dilemma; he simultaneously argues that modern natural law is voluntarist in nature and that Grotius was its founder. However, as demonstrated in the previous chapter, Grotius was not a voluntarist but a moral realist; that is, he argued that common morality is innate and as such, a range of actions pertaining to it can be designated

[12] Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo,* (hereafter *DJN*) trans. Charles Henry Oldfather and William Abbott Oldfather, (Oxford: Clarendon Press, 1934), p.v-vi.

as intrinsically moral or intrinsically immoral. Pufendorf reconciles this anomaly by specifying the two particular senses in which Grotius can, despite his moral realism, be considered the founder of modern natural law. First is the manner in which he strove to identify a universal morality that could not be subjected to the religious differences that had divided Europe. Secondly, and most importantly, Grotius is heralded for basing his minimal morality on two empirically verifiable conditions; the common 'state of nature' of humankind prior to the institution of civil society, and the primacy of self-love manifested in the instinctual desire for self-preservation.[13] On both of these points, Pufendorf sides with Grotius and argues that, contrary to Hobbes' claim that the state of nature is the state of war of all against all,[14] the state of nature is one of peace:

> We conclude that from all this that the natural state of men, even when considered apart from commonwealths, is not one of war, but of peace; a peace founded on the following laws: A man shall not harm one who is not injuring him; he shall allow everyone to enjoy his own possessions; he shall faithfully perform whatever has been agreed upon; and he shall willingly advance the interests of others, so far as he is not bound by more pressing obligations.[15]

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[13] James Tully, "Introduction" to Samuel Pufendorf, *On the Duty of Man and Citizen* (hereafter OHC) ed. James Tully, trans. Michael Silverthorne, (Cambridge: Cambridge University Press, 1998), p.xviii-xix.

[14] Thomas Hobbes, *Leviathan,* ed. J.G.A. Gaskin, (Oxford: Oxford University Press, 1996), XIII.8, p.84; Pufendorf, *DJN,* II.II.5, p.165.

[15] *DJN,* II.II.9, p.172-3.

As such, Pufendorf bases his own theory of the law of nature on the two fundamental laws of Grotius' minimal morality, the laws of inoffensiveness and abstinence. However, as will be seen shortly, he combines them with a notion of obligation derived from Thomas Hobbes' understanding of law and his own variant of moral voluntarism.

Moral voluntarism

The starting point of Pufendorf's theory of the law of nature is the claim that humans are endowed with two faculties that set them apart from the rest of the animal kingdom, understanding *[intellectus]* and will.[16] As such, "[h]uman actions arise from the will."[17] However, as "the wills of different men tend in different directions...there must have been some rule to which these wills might conform" in order to achieve 'order and decency'.[18] The rule Pufendorf cites, "is called law *[lex]*" but unlike Grotius' understanding of it, it is strictly a human imposition.[19] Two points are therefore critical to the development of Pufendorf's natural law theory here. The first is the assertion that "human society is almost entirely a human artifact" constructed, not in a supernatural or innately determined manner, but through the choices and agreements that humans make with one another.[20] Thus, the

[16] *OHC*, I.I.4,9, p.17&19.

[17] *ibid.*, I.2.1, p.27.

[18] *ibid.*

[19] *ibid.*, I.2.3, p.27.

[20] J.B. Schneewind, "Pufendorf's Place in the History of Ethics", in *Grotius, Pufendorf and Modern Natural Law*, ed. Knud Haakonssen, (Aldershot: Ashgate, 1999), p.200.

determination of morals according to which society is ordered is the result of human will, hence Pufendorf's moral voluntarism.

According to Pufendorf's theory, the formation of civil society is the result of two innatefeatures of human nature, the impelling desire for self-preservation and the proclivity for sociability, and it is in his particular combination of these two elements that Pufendorf seeks to accommodate both the dominant views of Hobbes and Grotius. With both Grotius and Hobbes, Pufendorf maintains that "[i]n common with all living things which have a sense of themselves, man holds nothing more dear than himself, he studies in every way to preserve himself, he strives to acquire what seems good to him and to repel what seems bad to him."[21] Furthermore, Pufendorf also notes the 'immoral soul' and 'greater proneness to evil' of humankind that accompanies the desire for self-preservation. However, on the other hand, he also argues that "[t]he saying: 'It is not good for man to be alone' is applicable not only to the state of matrimony but also to the association with other men in general."[22] However, given the 'depth of human depravity' and the ease with which humans injure one another, "a society of men cannot be constituted nor maintained in a peaceful and firm state without law."[23] Thus he writes that "since men cause so many injuries to each other even now, when law and punishment hang over them, what would the future hold, if there were no control over anything, if no

[21] Pufendorf, *OHC,* I.2.3., p.27.

[22] Pufendorf, *DJN,* II.I.8, p.152-3.

[23] *ibid.*

direction from within curbed the desires of man?"[24] For Pufendorf therefore, the 'fundamental natural law' is that "every man ought to do as much as can be to cultivate and preserve sociality."[25]

Cognisant with this argument, and in accordance with Grotius' assertion that individuals and states are morally equivalent, Pufendorf concludes that the law of nations *is* the law of nature. In doing so, he refutes Grotius' claim that the law of nations is, in some part, positive law derived from the customs of relations between states and endorses the collapsing of *jus gentium* into *jus naturae* evident in Hobbes' work:

> There is, finally, one more question to be considered here, namely whether there be a peculiar and positive law of nations, distinct from natural law; for on this point scholars are not entirely agreed. It is held by many that the law of nature and the law of nations are one and the same thing, differing only in their external denomination. Hence Hobbes, *De Cive*... divides natural law 'into the natural law of men and the natural law of states, which is commonly called the law of nations. The injunctions of both', he adds, 'are the same; but because states, upon being constituted, take on the personal properties of men, on being applied to whole states and nations or peoples, is called the law of nations'. To this statement we also fully subscribe. Nor do we feel that there is any other voluntary or positive law of nations which has the force of a law, properly so called, such as binds nations as if it proceeded from a superior.[26]

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[24] Pufendorf, *DJN*, II.I.6, p.149-50.

[25] Pufendorf, *OHC*, I.3.9., p.35.

[26] *ibid.*, II.III.23, p.226.

Similarly, in *Elementorum Jurisprudentiae Universalis* he writes;

> ..on the subject of the *Law of Nations,* which, in the eyes of some men, is nothing other than the law of nature, in so far as different nations, not united with another by a supreme command, observe it, who must render one another the same duties in their fashion, as are prescribed for individuals by the law of nature. On this point there is no reason for our conducting any special discussion here, since what we recount on the subject of the law of nature and of the duties of individuals, can be readily applied to whole states and nations which have also coalesced into one moral person. Aside from this law, we are of the opinion that there is no law of nations, at least none which can properly by designated by such a name.[27]

Thus, the second important feature of Pufendorf's natural law theory is his conceptualisation of law. For Pufendorf, law *[lex]* is defined as "a decree by which a superior obliges one who is subject to him to conform his actions to the superior's prescript *[praescriptum].*"[28] This notion of law is derived from the works of Thomas Hobbes with whom Pufendorf sought to reconcile Grotius. Indeed, central to Hobbes' natural law theory is his distinction between the terms *jus* and *lex*, right and law. Defining the latter term in *De Cive*, he writes that "LAW is *a command of that person (whether man or council) whose instruction is the reason for*

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[27] Samuel Pufendorf, *Elementorum Jurisprudentiae Universalis Libri Duo (Elements of Universal Jurisprudence)* (hereafter *EJU*), trans. WA. Oldfather, (Oxford: Clarendon Press, 1931), I.XIII.24, p.165.

[28] *ibid.*, I.2.3, p.27.

obedience."[29] Distinguishing between right and law in *Leviathan* he similarly writes that;

> RIGHT, consisteth in liberty to do, or to forebear; Whereas LAW, determineth, and bindeth to one of them; so that law and Right, differ a much, as Obligation and Liberty; which in one and the same matter are inconsistent.[30]

Thus, in accordance with Hobbes, a notion of obligation, defined as "a bond of right by which we are constrained by the necessity of making some performance...a kind of bridle on our liberty", is critical to Pufendorf's understanding of law.[31] Critically, obligation requires a superior to prescribe certain actions and, for this reason, Pufendorf maintains that morality must be voluntarist. For, if it were not, God himself would be subject to the rule of a superior being. As Schneewind points out, "[t]he argument that is central to Pufendorf's thought, and that indicates the real difference between his view and Grotius' is that to set up "an external rule for the morality of human actions beyond the imposition of God" is to admit some external principle co-eternal with God, "which He Himself had to follow in the assignment of forms of things."[32] As no external rules of morality can be said to exist it also stands to reason that "[m]oral distinctions result from acts of will, and not from

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[29] Thomas Hobbes, *On the Citizen,* ed. & trans. Richard Tuck and Michael Silverthorne, (Cambridge: Cambridge University Press, 1998), XIV.1, p.154.

[30] Hobbes, *Leviathan,* XIV.3, p.86.

[31] Pufendorf, *OHC,* I.2.3., p.27.

[32] Schneewind, p.203.

anything else."[33]According to Pufendorf then, moral entities are distinct from natural entities and moral goodness is defined in terms of acts in accordance with the law. Contrary to Grotius' understanding, for Pufendorf natural goodness does not have any inherent morality but can only be understood as 'moral' when recognised by voluntary human laws.

However, as Jon Parkin notes, "without a convincing account of natural obligation", Pufendorf's theory was particularly susceptible to claims of Hobbesianism and 'moral relativism' antithetical to the Grotian position.[34] It was thus in defending himself against such claims that Pufendorf enlisted the work of his contemporary Richard Cumberland. Interestingly however, Cumberland was particularly critical of Pufendorf's voluntarist morality, supposing, with Grotius and Leibniz, that absolute moral principles can be discerned in the law of nature. Nonetheless, it is to Cumberland he turns in order to justify his reconciliation of self-preservation and sociability and locate the concept of obligation in the law of nature. Thus, in doing so, Pufendorf tips the scales away from a Hobbesian position with the claim that;

> Sociability is the 'chief principle in the study of natural law derived from the observation of the nature of things and the desires of men.' It is an opinion held by Plato, Aristotle and especially the Stoics, as it is completely opposed to the Hobbesian doctrine of self-preservation, which Cumberland joins me in attacking.[35]

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[33] *ibid.*

[34] Jon Parkin, *Science, Religion and Politics in Restoration England,* (Woodbridge: The Boydel Press, 1999), p.207.

[35] Pufendorf in Parkin, p.209.

Furthermore, in *Specimen controversarium,* Pufendorf writes of Cumberland:

> In my opinion, however, the Englishman, Richard Cumberland has most soundly refuted his [Hobbes's] theories in his most learned and excellent book, De Legibus Naturae; and he has securely erected a counter-philosophy which agrees very closely with the views of the Stoics. I, too, had planned to do both of these things. And I must admit that I was delighted to see this work published abroad in the same year (rather different form) but nonetheless agreeing with my philosophy and demolishing very many tenets of Hobbes which I had criticised. Nor is the work of either of us the less valuable, because each has particular merits of its own in addition to those which they have in common.[36]

Again, using Cumberland to defend himself against claims of Hobbesianism, Pufendorf writes that "[i]f anyone carefully compares with mine the work of Richard Cumberland...he will see practically all his criticisms of Hobbes had been made by me too, though whereas his declared purpose was to demolish Hobbes's philosophy, I counted it as merely an ancillary task to refute his errors."[37]

More critical however, are the changes made to the manuscript of *De Jure Naturae et Gentium* prior to the publication of its second edition. Here, as Parkin notes, Pufendorf incorporates a notion of obligation cognisant with Cumberland's idea that the will of God, and hence obligation to natural law, is evident in the nature of things. Thus, he writes, with the 1684 addition in italics:

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[36] Samuel Pufendorf, *Specimen controversarium,* 1.6, Parkin, 209.

[37] *ibid.*

> Since He has so formed the world and man that the latter cannot exist without leading a social life, and for this reason gave him a mind capable of grasping the ideas that lead to this end, *and since He suggests these ideas to men's minds by the course of natural events as they come from Him as the first Cause, and represent clearly their necessary relationship and truth,* it is surely recognised that He also willed for man to regulate his actions by that native endowment which God himself appears to have given him in a special way above the beasts.[38]

Thus, obligation is derived via nature from God who has "assigned to every act agreeable with His Law its regular and natural effect, which tends to the advantage of man...good things Richard Cumberland calls natural rewards."[39] However, in accordance with his voluntarist stance, neither the 'good things' determined by God nor the obligations stemming from them are absolute or intrinsic in nature.

Bringing these ideas together, the stated aim of Pufendorf's *De offico hominis et civis juxta legem naturalem libri duo* is to "expound to beginners the principal topics of natural law in a short, and, I hope, lucid compendium."[40] In doing so, Pufendorf believed that his "framework constitutes a new *discipline* of natural law."[41] Central to this new system is the demarcation of the boundaries separating natural from civil law and moral theology. As Pufendorf argues, there are three distinct disciplines, derived from "the common duties of man, particularly those

[38] Pufendorf, *DJN*, 2.3.20, Parkin, p.211.

[39] *ibid.*, 2.3.21.

[40] Pufendorf, *OHC*, p.6.

[41] *ibid.*

which render him capable of society *[sociabilis]* with other men;...the duties of a man as a citizen living in a particular and definite state *[civitas];* [and]...the duties of a Christian".[42]

> The first is the discipline of natural law, which is common to all nations; the second is the discipline of the civil law of individual states, which has, or may have, as many forms as there are states into which the human race is divided; the third is called moral theology, and is distinct from the part of the theology which explains the articles of our faith.[43]

Thus, "[i]n natural law a thing is affirmed as to be done because it is inferred by right reason to be essential to sociality *[socialitas]* among men."[44] As will be seen in the following section, it is this demarcation of natural law that is particularly set upon by Leibniz in his "Opinion on the Principle of Pufendorf".

Beyond Pufendorf - Gottfried Wilhelm von Leibniz

Gottfried Wilhelm von Leibniz's 'Opinion on the Principles of Pufendorf"[45] remains perhaps the harshest set of criticisms leveled at *De Officis* to date. Indeed, although he is rarely discussed with reference to the development of Grotian scholarship, Leibniz exerted a significant influence on its development. In

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[42] *ibid.*, p.7.

[43] *ibid.*

[44] *ibid.*

[45] Gottfried Wilhelm von Leibniz, "Opinion on the Principles of Pufendorf" (1706), in *The Political Writings of Leibniz*, trans. & ed. Patrick Riley, (Cambridge: Cambridge University Press, 1972), pp.64-76.

particular, despite chiding Pufendorf's 'Grotian' natural law theory, Leibniz also sought to achieve a reconciliation of Grotius and Hobbes in his works. However, in doing so, Leibniz concurs with Grotius' distinction between the law of nature and the voluntary law of nations, thereby refuting Pufendorf's claim that the law of nations *is* the law of nature. As will be seen shortly, this is of particular importance with regard to Christian von Wolff's theory of the law of nations.

Leibniz's "Opinion on the Principles of Pufendorf" begins with the criticism that Pufendorf's *De Officio Hominis et Civis* "suffer[s] from no small weaknesses."[46] Rather sarcastically, he argues that "since the greater part of the thoughts expounded in the course of the work are not consistent with the principles, and are not logically deduced from them, but rather are borrowed elsewhere, from good authors, nothing keeps this little book from containing many good things, and from serving usefully as a compendium of natural law for those who are satisfied with a superficial smattering (as are the majority of readers), without looking for sound learning."[47] Substantively however, it is Pufendorf's demarcation of natural law that most concerns Leibniz and, in particular, its division from moral philosophy. Thus, Leibniz argues that "[i]t should not be admitted, therefore, as our author urges, that that which remains hidden in the soul, and does not appear externally, is not pertinent to natural law."[48] At heart, this limitation is apparently derived from

[46] Leibniz, "Opinion on the Principles of Pufendorf", p.65.

[47] *ibid.*

[48] *ibid.*, p.68.

Pufendorf's more fundamental failure to correctly establish the efficient cause of the law of nature. Thus Leibniz writes;

> He, indeed, does not find it in the nature of things and in the precepts of right reason which conform to it, which emanate from the divine understanding, but (what will appear to be strange and contradictory) in the command of a superior...If we admit this, no one will do his duty spontaneously; also, there will be no duty when there is no superior to compel its observance; nor will there be any duties for those who do not have a superior. And since, according to the author, duty and acts prescribed by justice coincide (because his whole natural jurisprudence is contained in the doctrine of duty), it follows that all law is prescribed by a superior. This paradox, brought out by Hobbes above all, who seemed to deny to the state of nature, that is [a condition] in which there are no superiors, all binding justice whatsoever (although even he is inconsistent), is a view to which I am astonished that anyone could have adhered.[49]

In order to resolve this issue, Leibniz sides with Grotius' claim that "there would be a natural obligation even on the hypothesis – which is impossible – that God does not exist, or if one but left the divine existence out of consideration."[50] This, he argues, is because "care for one's own preservation and well-being certainly lays on men many requirements about taking care of others, as even Hobbes perceives in part."[51]

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[49] *ibid.*, p.70.

[50] *ibid.*, p.71.

[51] *ibid.*

With this, Leibniz's praise and adoration of Hobbes, and in particular Grotius, whom he refers to as "that excellent man"[52] is revealed. Writing of Pufendorf's attempt to compose a comprehensive compendium of natural law, Leibniz writes;

> The discernment and erudition of the incomparable Grotius, or the profound genius of Hobbes, would have been capable of something like this, if the former had not been distracted by many other concerns, and the latter had not lain down truly wicked principles, and adhered to them with too much fidelity.[53]

In a letter to Thomas Hobbes written in 1670, Leibniz also writes;

> I believe that I have read almost all your works, in part separately and in part in the collected edition, and I freely admit that I have profited from them as much as from few others in our century…I know no one who has philosophized more exactly, clearly, and elegantly than you, not even excepting that man of divine genius, Descartes himself.[54]

Heaping praise on both men, Leibniz sought to "reconcile the views of the radical Hobbes and the more traditional natural law theorist Hugo Grotius."[55] In particular, as Gregory Brown notes, Leibniz specifically attempted "to reconcile the view of

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[52] Gottfried Wilhelm von Leibniz, "*Caesarinus Fürstenerius (De Suprematu Principum Germaniae)* (1677), in *The Political Writings of Leibniz,* p.113.

[53] Gottfried Wilhelm von Leibniz, "Opinion on the Principles of Pufendorf", p.65-66.

[54] Gottfried Wilhelm von Leibniz, "Letter to Thomas Hobbes" (July 1670), in *Philosophical Papers and Letters,* ed. & trans. Leroy E. Loemker, Vol. 1, (Chicago: University of Chicago Press, 1956), p.162 & 166.

[55] Nicholas Jolley, "Introduction", *The Cambridge Companion to Leibniz,* (Cambridge: Cambridge University Press, 1995), p.14-15.

Grotius that human society was founded upon a faculty of sociability inherent in the nature of man, and the view of Hobbes that "all society...is either for gain, or for glory; that is, not so much for love of our fellows, as for the love of ourselves.""[56] This reconciliation, Brown writes, "was based upon his notion of "disinterested love" whereby he was able to "reconcile egoism with the possibility of altruism and to develop a theory of obligation which did not make obligation dependent...on threat of punishment or the command of a superior."[57] Furthermore, in doing so, Leibniz also manages to achieve a partial reconciliation of the relatively lofty law of love apparent in Grotius' works with a more solid notion of obligation.

Leibniz's notion of 'disinterested love' is fundamentally derived from his understanding of justice as "the charity of the wise man, that is, as charity which follows the dictates of wisdom."[58] Wisdom, he argues, "is merely the science of happiness, or that science which teaches us to achieve happiness."[59] Thus, in "Elements of Natural Law" Leibniz writes:

> It is obvious that the happiness of mankind consists in two things – to have the power, as far as is permitted, to do what it wills and to know what, from the nature of things, ought to be willed. Of these, mankind has almost

[56] Gregory Brown, "Leibniz's moral philosophy", in *The Cambridge Companion to Leibniz,* p.411.

[57] *ibid.*

[58] Gottfried Wilhelm von Leibniz, "*Codex Juris Gentium Diplomaticus*" (1693), in *Philosophical Papers and Letters,* p.690.

[59] Gottfried Wilhelm von Leibniz, "On Wisdom", in *Philosophical Papers and Letters,* p.697.

achieved the former; as to the latter, it has failed in that it is particularly impotent with respect to itself.[60]

Combining a notion of duty with self-preservation he continues to argue that "as concerns our own good, it is universally admitted that what one does out of the necessity of protecting his own security seems to be done justly" and, that "no one is willing to separate justice from prudence, for, as everyone agrees, justice is a definite virtue, but every virtue restrains the affections so that nothing can obstruct the dictates of right reason."[61] Therefore, "it follows...that there can be no justice without prudence", hence achieving the requisite synthesis.[62]

Despite the undoubted influence of Leibniz on Wolff's work however, to be discussed in the following section, the extent to which this particular work directed his thinking is questionable. In a letter written in 1714, Leibniz remarked that "Mr Wolff has agreed with some of my sentiments, but since he is very busy with teaching, especially mathematics, we have not had much communication concerning philosophy, he can hardly know more of my opinions than those which I have published."[63] Although Pufendorf is mentioned in a number of Leibniz's published works the only comprehensive treatment is to be found in his 'Opinion on

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[60] Gottfried Wilhelm von Leibniz, "Elements of Natural Law" (1670-71), in *Philosophical Papers and Letters,* p.203.

[61] *ibid.*, p.208.

[62] *ibid.*

[63] Gottfried Wilhelm von Leibniz to Remond or Pierre de Montmort, July 1714, quoted in Charles A. Corr, "Christian Wolff and Leibniz", *Journal of the History of Ideas,* Vol.36, No.2, (April-June 1975), p.248.

the Principles of Pufendorf'. As Riley notes, "originally written in the form of a letter [this work] became fairly well known in the early eighteenth century because Barbeyrac translated most of it and appended it to his translation of Pufendorf's *De Officio Hominis.*"[64] However, as noted above, there is no evidence to suggest that Wolff came into direct contact with this work.

Jean Barbeyrac

Jean Barbeyrac (1674-1744) is best known for his French annotated translations of Pufendorf's *De Jure Naturae et Gentium* and *De Officio Hominis et Civis*, and Grotius' *De Jure Belli ac Pacis.* Although Barbeyrac's reputation has "crystallized around his role as interpreter and annotator of Pufendorf", Tim Hochstrasser argues that he "provided an original contribution in his own right to the development of eighteenth-century natural-law theory that cannot be fully extrapolated from his edition of Pufendorf."[65] In particular, Barbeyrac sought, albeit unsuccessfully, to address Leibniz's criticisms of Pufendorf outlined in his *Opinions of the Principles of Pufendorf* and defend Pufendorf's alterations to Grotius' natural law theory. In particular, siding with Pufendorf, he writes in his annotated translation of *De Jure Belli ac Pacis;*

[64] Patrick Riley, *The Political Writings of Leibniz,* (Cambridge: Cambridge University Press, 1972). p.64.

[65] Tim Hochstrasser, "Conscience and Reason: The Natural Law Theory of Jean Barbeyrac", *The Historical Journal,* Vol.36, (1993), p.290.

> The Author here means what he calls *the Law of Nations* which he distinguishes from the *Law of Nature* as making a separate class. But in this he is mistaken.[66]

In large part however, the limited success of Barbeyrac's defence of Pufendorf's natural law theory can be attributed to the extent to which he ended up concurring with Leibniz's opinion. Thus, "[i]nstead of sweeping aside Leibniz's objections to modern natural law with a declaration of omnipotence of human reason in moral matters, Barbeyrac concedes Leibniz's judgement that a natural law which takes man as its starting point must finish by deriving obligation from the will of a superior, and the will of God in particular."[67] Indeed, his discussion of the *'etiamsi daremus'* of Grotius concludes that "the Will of GOD is the Source of all Duties."[68] With this, his defence of Pufendorf is rendered critically weak.

However, in the context of the Grotian scholarship Barbeyrac's significance concerns the controversial claim that Grotius was the 'father of modern natural law'. In the preface to the French translation of *De Jure Belli ac Pacis* he writes;

> One cannot refuse my Author the glory of being original in his class. It is the peculiar characteristic of this Treatise, the first of its kind, that it reduced

[66] Jean Barbeyrac in Hugo Grotius, *The Rights of War and Peace in Three Books Wherein are Explained, the Law of Nature and Nations, and the Principal Points relating to Government, to which are Added, All the Large Notes of Mr J. Barbeyrac,* (London: Innys & Manley, 1738), p.xiii.

[67] *ibid.*, p.306.

[68] Barbeyrac, p.xix.

> to a System the most beautiful and useful of the human sciences, and unfortunately the most neglected one.[69]

Further extrapolating this point, Barbeyrac continues to add that it was Grotius who "introduced the methodic study of Natural Law" and was the first to attempt to systematise it.[70]

However, claims that Grotius was the 'father of modern natural law' have precipitated much controversy and debate in subsequent scholarship. As Anton-Hermann Chroust has written, "[s]ince Pufendorf it has become a totally unwarranted academic tradition to consider Hugo Grotius the true and unique 'Father of Natural Law'."[71] This trend, he argues, was instigated by Pufendorf's assertion that "it was Grotius who divorced Natural Law from theology (and religion) by grounding it solely in the "social nature" and natural reason of man", thereby rendering it 'modern'.[72] In a similar fashion, A.P. D'Entreves also attributes the emergence of this claim to Pufendorf's praise of Grotius as the "*vir incomparibilis* who dared to go beyond what had been taught in the schools, and to draw the theory out of the darkness in which it had lain for centuries."[73] However, both Leonard Krieger and Charles Edwards attribute the claim not to Pufendorf

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[69] Barbeyrac quoted in James St Leger, *The 'etiamsi daremus' of Hugo Grotius: a study in the origins of international law*, (Rome: Herder, 1962), p.38.

[70] Barbeyrac in St Leger, p.39.

[71] Anton-Hermann Chroust, 118, in Charles Edwards, *The life and legal writings of Hugo Grotius*, (Norman: University of Oklahoma Press, 1969), p.10.

[72] *ibid.*

[73] A.P. D'Entreves, p.50, in Edwards, p.10.

himself but to Barbeyrac's translation of Barbeyrac's own theory of the law of nature on his translation of *De Jure Naturae et Gentium.* While Krieger notes the influence of Barbeyrac's own theory of the law of nature on his translation of Pufendorf, Edwards goes so far as to say that "[a]n exhaustive examination of Pufendorf's political writings shows that in none of them does he state directly that Grotius was the 'Father of Natural Law'."[74] However, this seems to be an excessively pedantic argument for, as discussed above, in translations other than Barbeyrac's, Pufendorf writes that he is an intellectual 'Son' of Grotius, following in a tradition of scholarship begun by him. Of further interest here is Barbeyrac's own annotation of Prolegomena 11 of *De Jure Belli ac Pacis*, the passage in which the supposed 'secularisation' occurred. It reads:

> This Assertion is to be admitted only in the following Sense: That the Maxims of the Law of Nature are not merely arbitrary Rules, but are founded on the very Nature of Things; on the very Constitution of Man, from which certain Relations result, between such and such Actions and the State of a reasonable and sociable Creature.[75]

With this, even the extent to which Barbeyrac attributed the 'secularisation' of natural law to Grotius is brought into serious question.

To conclude therefore, Pufendorf is conventionally heralded as a pivotal figure of the natural law tradition of the seventeenth century. As this section has

[74]Leonard Krieger in Edwards, p.13.

[75] Barbeyrac, p.xix.

demonstrated, this assertion is not, in and of itself, problematic. For, as seen above, Pufendorf explicitly sought to reconcile the natural law theories of Hugo Grotius and Thomas Hobbes and, in doing so, relied upon the works of a number of less prominent natural lawyers including Richard Cumberland and John Selden. However, what is problematic is the extension of the claim that, as a natural lawyer, Pufendorf was not a 'Grotian'. Contrary to this, it is perfectly clear that an explicit and self-conscious path of transmission can be discerned linking the works of Grotius and Pufendorf and, by extension, that Pufendorf can be viewed as the second generation in an historically constituted 'Grotian' tradition. What is critical here then, is that, despite the extent to which Pufendorf deviates from Grotius' thought, the term 'Grotian' refers to a particular understanding of the law of nature instigated by Grotius and developed by subsequent writers. As illustrated in the previous chapter, this fits well with the historical character of Hugo Grotius. Furthermore, as will be seen in the following section of this chapter, although it is combined with other thematic concerns, natural law thinking also underpins the path of transmission that is drawn between Grotius and Vattel.

Christian von Wolff

Despite the demonstrable influence of Leibniz's works on both Christian von Wolff and Emerich de Vattel, with Wolff emerged a new form of Grotian scholarship that was not explicitly concerned with moral philosophy. The central tenets of Christian von Wolff's *Jus Gentium Methodo Scientifica Pertractatum* are presented in its

opening dedication to the 'Most Excellent and Serene Master William Charles Henry Friso, Prince of Orange and Nassau;

> That eternal and unchangeable law, which nature herself has established, controls all the acts of individual men as well as those of nations also, by prescribing duties both toward themselves and toward each other. And just as it has united individual men to each other by the closest bond and has established among them a certain society, so that man is necessary to man, and nothing is more useful to man than man; so by no less close a bond has it united nations, and moulded them into a supreme state, so that nations is necessary to nations, and nothing is more useful to nation than nation.[76]

In developing this argument, Wolff introduces two ideas that have been critical to the development of the 'Grotian tradition'. The first concerns the relationship between the *jus naturae* and the *jus gentium* and explicitly seeks to redress Grotius' problematic understanding of the voluntary law of nations while the second introduces the notion of the *civitas maxima* or supreme state. However, as both these ideas are embedded in Wolff's understanding of the law of nations derived from the law of nature, it is necessary to first introduce the central tenets of this relationship.

According to Wolff's conception, the law of nature is the "science of that law which nations or people use in their relations with each other and the obligations

[76] Christian von Wolff, *Jus Gentium Methodo Scientifica Pertractatum*, trans. Joseph H. Drake, (Oxford: Clarendon, 1934), Dedication, p.3.

corresponding thereto."[77] As nations are fundamentally comprised of "a multitude of men united into a state," in its most basic sense, the law of nations is "nothing except the law of nature applied to nations."[78] However, in the absence of a political superior, the nature of obligation inferred by Wolff's definition of the law of nations necessarily differs between individuals and states. For this reason, Wolff distinguishes between what he terms the 'necessary law of nations' and its 'voluntary', 'stipulative' and 'customary' forms. Considered together, the voluntary, stipulative and customary laws of nations are fused in Vattel's 'popularisation' of Wolff's work and, in modern international legal works are considered to be facets of the positive law of nations determined by customs, treaties and the tacit agreements of states. The necessary law of nations is however, "the law of nature applied to nations" and, in accordance with the 'immutability of natural law', is 'absolutely immutable'.[79] The necessary law of nations therefore "rules the acts of nations" by obligations which are themselves also necessary and immutable. Thus, Wolff writes;

> Nature herself has established society among all nations and binds them to preserve society. For nature herself has established society among men and binds them to preserve it. Therefore, since obligation, as coming from the law of nature, is necessary and immutable, it cannot be changed for the reason that nations have united into a state.[80]

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[77] *ibid.*, Prolegomena 1, p.9.

[78] *ibid.*, Prolegomena 2, p.9; Prolegomena 3, p.9

[79] *ibid.*, Prolegomena, 4&5, p.10.

[80] *ibid.*, Prolegomena 7, p.11.

In accordance with a fundamental understanding of the fundamental precepts of natural law then, Wolff establishes that a nation's primary duty is that of self-preservation. In this vein, he establishes at the outset that "[e]very nation is bound to preserve itself."[81] Following a similar format to Grotius' presentation of the law of nature Wolff continues to argue that in light of the nation's overwhelming impetus for self-preservation, it follows that "the law of nature gives to men the right to those things without which they could not perform their obligation, every nation has the right of those things without which it cannot preserve itself."[82] In accordance with the duty of nations to self-preservation, Wolff also outlines that of averting "all danger of destruction"[83] and "the obligation to strive for power."[84]

From this understanding of self-preservation Wolff further establishes what he terms the *civitas maxima*, or supreme state, defined as the "state, into which nations are understood to have combined and of which they are members or citizens."[85] It is, according to Wolff, a concept that "was not unknown to Grotius, nor was he ignorant of the fact that the law of nations was based on it."[86] However, despite his admiration of Grotius' works, Wolff contends that Grotius' understanding of the *civitas maxima* is flawed by his failure to take the distinction between the necessary

[81] *ibid.*, I.31, p.22.

[82] *ibid.*, I.32, p.23.

[83] *ibid.*, I.33, p.23.

[84] *ibid.*, I.70, p.42.

[85] *ibid.*, Prolegomena 10, p.13.

[86] *ibid.*

law of nations and the voluntary law of nations far enough. Thus, he argues, summing up the central points of his theory;

> Since nature herself has united nations into a supreme state in the same manner as individuals have united into particular states, the manner also in which the voluntary law of nations ought to be fashioned out of natural law, is exactly the same as that by which civil laws in a state ought to be fashioned out of natural laws. For that reason the law of nations, which we call voluntary, is not, as Grotius thought, to be determined from the acts of nations, as though from their acts their general consent is to be assumed, but from the purpose of the supreme state which nature herself established, just as she established society among all men, so that nations are bound to agree to that law, and it is not left to their caprice as to whether they should prefer to agree or not.[87]

Nonetheless, within the *civitas maxima* "[e]very nation owes to every other nation that which it owes for itself, in so far as the other does not have that in its own power, while the first nation without neglect of duty towards itself can perform this for the other."[88] In particular, applying Leibniz's philosophy of the role of happiness in the purpose of the individual to the relations of nations, Wolff lists mutual love, consideration for the happiness of others, charity, contributing to the preservation and perfection of others, contributing to barbarous and uncultivated nations, friendship, forbidding injury and the obligation to engage in commerce amongst the most prominent rights and duties owed to nations.[89]

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[87] *ibid.*, p.6.

[88] *ibid.*, II.156, p.84.

[89] *ibid.*, II.156-187, p.84-97.

Emerich de Vattel

The influence of Leibniz and Wolff on the works of Emerich de Vattel is marked and, in many ways, Vattel's *opus magnum, Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la Conduite et aux Affaires des Nations et des Souverains (The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and Sovereigns),* can be seen as representing a more thorough fusion of these two writers' ideas than was achieved by Wolff himself. Indeed, Vattel's first work, although rarely referred to today, was a *Défense du système leibnitzien* published in 1741. As Alfred de Lapradelle notes, it was Vattel's "reading of Leibniz" that had, in the first instance, "determined his vocation."[90] Thus, with Wolff, Vattel applies a Liebnizian philosophy of the purpose of the individual and the nation to preserve and protect itself and cultivate happiness in the relations of nations.

Wolff's *Jus Gentium Methodo Scientifica Pertractatum* is the starting point of Vattel's most famous work and his later *Questions de droit naturel ou observations sur le traité de la nature par M. Wolff.* In justifying why he takes Wolff's work as his starting point, Vattel provides a brief assessment of the treatment of the law of nations to date. In doing so, the first line of the preface to *Le Droit des Gens* states

[90] Alfred de Lapradelle, "Emer de Vattel" in *Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la Conduit et aux Affaires des Nations et des Souverains, The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns,* trans. Charles G. Fenwick, (Washington: Carnegie Institution, 1916), p.iv.

that the "Law of Nations", later defined as *"the science of the rights which exist between Nations or States, and of the obligations corresponding to these rights,"*[91] "a great important a subject as it is, has thus far not received the attention which it merits."[92] In justifying this statement he outlines the progress made and failings of Wolff's most prominent predecessors, Hugo Grotius, Thomas Hobbes and Jean Barbeyrac. However, combining a Leibnizian view that "man should combine his powers with those of other men to promote the perfecting of all"[93] with Wolff's distinction between the law of nature and the law of nations, Vattel refutes and adapts many of Wolff's central points. As such, in light of this and the 'dry' scholastic nature of Wolff's Latin prose,[94] his expressed purpose in composing *Le Droit des Gens* is "to facilitate for a wider circle of readers a knowledge of the brilliant ideas" contained in Wolff's work.[95]

Following that pattern of argument evident in natural law thinking of the time, Vattel maintains, with Wolff, that the *"Law of Nations* is in its origin merely the *Law of Nature applied to Nations."*[96] Within the bounds of the necessary law of nature, Vattel posits the existence of a "universal society of the human race," instituted in response to the natural fact that, according to man's nature, "he is not sufficient unto himself and necessarily stands in need of the assistance and

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[91] Vattel, Introduction, 3, p.3.

[92] *ibid.*, Preface, p.3a.

[93] Lapradelle, p.vii

[94] *ibid.*, p.viii

[95] Vattel, p.7a.

[96] *ibid.*, I.6, p.4.

intercourse of his fellows, whether to preserve his life or to perfect himself and live as befits a rational animal."[97] Thus, incorporating Leibniz's notion of the purpose of society, Vattel writes that "[t]he end of the natural society established among men in general is that they should mutually assist one another to advance their own perfection and that of their condition."[98] From this Vattel derived what he considers to be the first general law of nations; "that each Nation should contribute as far as it can to the happiness and advancement of other Nations."[99] However, in a statement reminiscent of Grotius' conceptualisation of the minimal obligations of sociability in *De Jure Praedae,* Vattel adds the caveat that a nation's "duties towards itself clearly prevail over its duties towards others."[100] Therefore, the second general law of nations states that "[s]ince Nations are free and independent of one another as men are by nature...each Nation should be left to the peaceful enjoyment of that liberty which belongs to it by nature."[101]

As such, the first two general laws of nations are fundamentally contradictory in nature, the first imploring states to contribute to the happiness of other states, and the second, in accordance with the more fundamental right to self-preservations, emphasising the right of states to be left to enjoy their liberty. In the first instance, Vattel seeks to resolve this contradiction by introducing the notion of perfect and imperfect rights. Perfect rights, he argues, "are those which carry with the right of

[97] *ibid.*, I.10-11, p.5.

[98] *ibid.*, I.13, p.6.

[99] *ibid.*, I.14, p.6.

[100] *ibid.*

[101] *ibid.*, I.15, p.6.

compelling the fulfillment of the corresponding obligations" whereas imperfect rights, "can not so compel."[102] However, the problem is addressed in far more detail in the following two books of *Le Droit des Gens,* the first of which considers a nation 'by itself', while in the second nations are considered 'in their relations with other nations.'

However, before launching into his discussion of nations and their relations, Vattel also distinguishes between the voluntary, conventional and customary law of nations. He argues;

> The necessary and the voluntary laws of nations are therefore both established by nature, but each in a different manner; the former, as a sacred law which nations and sovereigns are bound to respect and follow in all their actions; the latter, as a rule which the general welfare and safety oblige them to admit in their transactions with each other.[103]

In particular, he is at pains to demonstrate that the voluntary law of nations did not emerge from a naturally occurring *civitas maxima*, but via the agreement of nations on principles that are bound to advance society. Indeed, Vattel argues that the 'fiction' of the *civitas maxima* is "neither reasonable nor well enough founded to deduce there from the rules of the Law of Nations at once universal in character, and necessarily accepted by Sovereign states."[104] Rather, "[a]s a consequence of that liberty and independence, it exclusively belongs to each nation to form its own

[102] *ibid.*, I.17. p.7.

[103] *ibid.*, p.xv.

[104] *ibid.*, p.9a.

judgement of what her conscience demands of her – of what she can and cannot do – of what it is proper or improper for her to do: and of course it rests solely with her to examine and determine whether she can perform any office of humanity without neglecting the duty which she owes to herself."[105] In accordance with his moral pluralism then, Vattel conceives of a distinctly different international society to Wolff.

In accordance with the emphasis on liberty and pluralism it affords, Vattel's understanding of international society is founded on the mutual recognition of sovereignty and the legal equality of states. Thus he writes that "differences of religion", for example, must be "absolutely foreign" to members of the international society of sovereign states for, "[t]heir common safety requires that they should be capable of treating with each other, and of treating with security."[106] With this, as Andrew Hurrell notes, "Vattel is the first writer on international law to elucidate clearly the principle of sovereign equality, that all states possess equal rights – or an equal capacity for rights."[107] Indeed, a Vattel famously writes; "A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom."[108]

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[105] *ibid.*, p.lxi.

[106] *ibid.*, II.XVI, p.195.

[107] Andrew Hurrell, "Vattel: Pluralism and its Limits" in *Classical Theories of International Relations*, ed. Ian Clark and Iver B. Neumann, (Houndmills: Macmillan, 1996), p.239.

[108] Vattel, p.lxii.

However, Vattel also recognises that, in a self-help system whereby the principle of self-preservation provides the overwhelming impetus for action, a 'balance of power' system provides the means according to which conflict may be avoided. It is in his explication of the concept of the balance of power that Vattel's understanding of European international society is made apparent:

> Europe forms a political system in which the Nations inhabiting this part of the world are bound together by their relations and various interests into a single body. It is no longer, as in former times, a confused heap of detached parts, each of which had but little concern for the lot of the others, and rarely troubled itself over what did not immediately affect it. The constant attention of sovereigns to all that goes on, the custom of resident ministers, the continual negotiations that take place, make of modern Europe a sort of Republic, whose members – each independent, but all bound together by a common interest – unite for the maintenance of order and the preservation of liberty. This is what has given rise to the well-known principle of the balance of power, by which is meant an arrangement of affairs so that no State shall be in a position to have absolute mastery and dominate over the others.[109]

Despite his pluralism and emphasis on the self-preservation of the sovereign state, a residual moral impetus remains in Vattel's work – although, as will be seen in the following chapters, his future critics certainly did not see it like that. Having established the general duty of a nation to itself and the objects of good government, Vattel returns once more to the conflict apparent between the nation's rights and duties that pertain to itself and those that pertain to other nations. In

[109] *ibid.*, III.III.47, p.251.

addressing this problem, Vattel introduces the concept of the *offices of humanity* in the opening chapter of Book II, 'Nations Considered in their Relation with Other Nations'. These *offices of humanity*, he writes, "consist in the fulfilment of the duty of mutual assistance which men owe to one another because they are men, that is to say, because they are made to live together in society and are of necessity dependent upon one another's aid for their preservation and happiness, and for the means of a livelihood conformable to their nature."[110] They are derived from the fact that by nature, humans "can not be sufficient unto [themselves], nor continue and develop [their] existence, not live happily without the assistance" of their fellow humans.[111] However, it does not follow that the civil society that this necessitates exists among nations as Wolff's conception of the *civitas maxima* posits. As Vattel explains;

> But as soon as a sufficient number [of individuals] have united under a government, they are able to provide for most of their needs, and they find the help of other political societies not so necessary to them as the State itself is to individuals.
>
> But these individual societies have, it is true, strong motives for mutual communications and intercourse; they have even an obligation to this effect, since without good reason no man may refuse his assistance to another.[112]

In this vein, Vattel introduces the common duties of nations whilst maintaining, contrary to Wolff, that "it is enough that Nations conform to the demands made

[110] *ibid.*, II.I.2, p.114.

[111] *ibid.*, II.I.3, p.114.

[112] *ibid.*, p.9a-10a.

upon them by that natural and world-wide society established among all men."[113] Thus, he maintains that "when the occasion arises, every Nation should give its aid to further the advancement of other Nations and save them from disaster and ruin, so far as it can do so without running too great a risk."[114] However, this injunction to help others is a general obligation imposed by human society and consequently resides outside the concept of the *civitas maxima*. In order to maintain the nation's right to liberty and non-interference then, Vattel also specifies that a nation "has no right to force them to accept its offer of help."[115] The contradictory nature of the two basic laws of nations is therefore resolved by establishing that "[a] Nation has...only an imperfect right to offices of humanity," that is, although its right to ask for them is perfect, "it cannot force another Nation to perform them."[116] With this then, Vattel retains an absolutely minimal notion of moral obligation in his theory of the law of nations, privileging the rights of the sovereign state to self-preservation, liberty and advancement.

Vattel's theory of the law of nations marks one of the most significant turning points in both the history of international law and the Grotian scholarship. In the first instance, although Vattel retains the fundamental principles of the law of nature as the foundations of his law of nations, by favouring the authority of the voluntary, or positive, law of nations he paved the way for legal positivism to really take hold

[113] *ibid.*, p.10a.

[114] *ibid.*, II.I.4, p.114.

[115] *ibid.*, II.I.7, p.115.

[116] *ibid.*, II.I.10, p.116.

in the late eighteenth and early nineteenth centuries.[117] Similarly, although Vattel does not achieve a complete separation of law and morality, retaining a minimal moral sense with his *offices of humanity*, his pluralist outlook views the possibility of a universal moral order with immense scepticism. When considered alongside the central precepts of legal positivism, to be discussed in the following section, Vattel may be seen as facilitating the final divorce of law and morality that followed in international legal scholarship. For this reason, he is widely viewed amongst the 'strict' Grotians of the twentieth century, most prominently Cornelius van Vollenhoven, as a "perversion of the gospel."[118] Finally, as a post-Westphalian text, cognisant with the workings of the emergent modern sovereign states-system, *Le Droit des Gens* was widely considered to be more immediately applicable to the concerns of contemporary international relations. As a result, before long it superseded *De Jure Belli ac Pacis* as the premiere exposition of the law of nations to date.

Henry Wheaton

> ...Hugo Grotius, who was born in the latter part of the same century, and flourished in the beginning of the seventeenth. That age was peculiarly fruitful in great men, but produced no one more remarkable for genius and for variety of talents and knowledge, or for the important influence his

[117] Hurrell, p.234.

[118] Martin Wight, "Western Values in International Relations" in *Diplomatic Investigations: Essays on the Theory of World Politics,* ed. Herbert Butterfield and Martin Wight, (London: George Allen & Unwin, 1966), p.106.

> labors exercised upon the subsequent opinions and conduct of mankind. Almost equally distinguished as a scholar and a man of business, he was at the same time an eloquent advocate, a scientific lawyer, classical historian, patriotic statesman, and learned theologian. His was one of those powerful minds which have paid tribute of their assent to the truth of Christianity.[119]

Following the publication of Vattel's *Le Droit des Gens,* the popularity of Grotius' work suffered a sharp decline. Not only was Vattel's treatise considered more applicable to the modern international states-system with its secular orientation and understanding of the balance of power but Grotius' work had begun to seem obsolete. However, the rescue of Grotius' works was soon at hand and came as international law theorists in the newly formed United States of America sought to establish the inclusion of their recently independent republic in the 'family of nations' or 'civilised world'. In returning to Grotius, Wheaton made three significant contributions to the development of the 'Grotian tradition'. First, he, amongst others, facilitated the erroneous association of Hugo Grotius with the Westphalian Peace Treaties that has continued to mark Grotian scholarship. Secondly, the precursor of the analytically constructed Grotian tradition, standing as an intermediary between the natural and positive law traditions, is also found in Wheaton's schematisation of the history of the law of nations. Finally, and most importantly, the works of Kent and Wheaton herald the return of 'Grotian morality' that had been superseded by state and power oriented concerns.

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[119] Henry Wheaton, *Elements of International Law,* p.27.

Grotius and the Peace of Westphalia

Despite his death in 1645, some three years prior to the settlements of Münster and Osnabrück, Grotius is still heralded as one of the primary architects of the peace. As made evident in Chapter Three however, rather than looking forward to the modern international society of sovereign states formally instituted at Westphalia, Grotius' conception of sovereignty sought to address antecedent questions relating to the legitimacy of the Dutch Revolt from Spanish rule in the sixteenth century. The most obvious reason for this incorrect association refers to the biographical history of Hugo Grotius himself and, in particular his employment as Queen Christina of Sweden's ambassador in Paris from 1634 to 1645. Indeed, available evidence would seem to suggest that Grotius was involved, in a diplomatic capacity, in the negotiations between France, Sweden, Germany and the Holy Roman Empire that preceded the settlement of Osnabrück.[120] However, what we also know of Grotius seems to indicate that he was a particularly poorly skilled diplomat who cared little for the profession.[121] Indeed, what is clear is that, due to his apparent ineptitude, Grotius did not play nearly the crucial role ascribed to him as the Swedish ambassador in Paris. Rather, perhaps the most solid connection between Grotius

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[120] Hamilton Vreeland, "Hugo Grotius, Diplomatist", *American Journal of International Law*, Vol.11, No.3, (July 1917), p.582ff. Although Vreeland provides a detailed account of Grotius' diplomatic engagements, his work is almost exclusively based on the work of M. de Burigny, *The life of the truly eminent and learned Hugo Grotius*, (London: no publisher named, 1754), that has been widely accused of gross inaccuracy. However, it remains apparent from this work and others, that Grotius was certainly involved in these negotiations.

[121] See for example a letter Grotius wrote to his brother saying that he would not care particularly if he lost his diplomatic position. Hugo Grotius to William de Groot, November 1641, quoted in R.W. Lee, "Grotius – The Last Phase, 1635-45", *TGS*, Vol.31, (1946), p.208.

and the Peace of Westphalia, related to his association with Sweden, is to be found in the fact that King Gustavus Adolphus was "one of the warmest adherents of Grotius' ideas"[122] and carried a copy of *De Jure Belli ac Pacis* with him always.

While claims that Grotius somehow directed the contents of the Westphalian Peace Treaties are both historically and intellectually unfounded, the question remains as to how this association came about. In addressing this question, Edward Keene presents the plausible proposal that it was the result of an intellectual dispute between the late eighteenth and early nineteenth century treaty historians G.F. von Martens and A.H.L. Heeren.[123] Following the Congress of Vienna, with its concerted effort to submit the actions of independent sovereigns to the Law of Nations, what became known as the 'Göttingen School' emerged as the center of counter-revolutionary scholarship in Europe. Although the historiographer Leopold von Ranke is probably the 'school's' most famous 'member', Heeren and Martens can also be attributed membership. In particular, although writers before him, such as Friedrich von Gentz, had discussed the idea of a states-system, Heeren particularly developed the idea of a *Staaten-system:* "the union of several contiguous states resembling each other in their manners, religion, and degree of social improvement, and cemented together by a reciprocity of interests."[124]

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[122] H.Ch.G.J. van der Mandere. "Grotius and International Society of To-day", *The American Political Science Review,* Vol.19, No.4, (November 1925), p.804.

[123] Keene, "The reception of Hugo Grotius", p.146.

[124] A.H.L. Heeren, *A Manual of the History of the Political System of Europe and its Colonies, From its Formation at the Close of the Fifteenth Century, To its Present Re-Establishment Upon the Fall of Napoleon,* Vol.1, trans. from the 5th German edition, (Oxford: D.A. Talboys, 1834), p.vii-viii.

According to Heeren, the most 'essential property' of the European states-system was "its *internal freedom;* that is, the stability and mutual independence of its members,"[125] thereby developing those principles that had previously appeared in Vattel's treatise. However, in discussing the emergence of the *Staaten-system,* Heeren contends that, as the event marking the transition from a medieval to a modern European order, the Peace of Westphalia ought to be considered its origin. Thus he writes that while it "settled neither all the important, not even all the contested relations...by settling the leading political maxims...the Peace of Westphalia became the foundation of the subsequent policy of Europe."[126] By extension then, modern international law must also be conceived as having originated with Westphalia. However, Heeren's proposition did not accord with that of the earlier Göttingen school treaty historian G.F. von Martens. Although he did not wholly dismiss the existence of a natural law of nations, von Martens stands as one of the most influential figures in the development of legal positivism, the central precepts of which are discussed in the following section. In particular, his *Summary of the Law of Nations, Founded on the Treaties and Customs of the Modern Nations of Europe,*[127] maintains that "Grotius was the 'father' of the modern science of studying international law through the historical analysis of treaties."[128]

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[125] *ibid.,* I., p.6.

[126] *ibid.,* p.161-162.

[127] G.F. von Martens, *Summary of the Law of Nations, Founded on the Treaties and Customs of the Modern Nations of Europe,* trans. William Cobbett, (Philadelphia, 1795).

[128] Keene, "The reception of Hugo Grotius", p.146.

Thus, when the international lawyers of the early nineteenth century began to write the first comprehensive textbooks of their subject, they were confronted with two contending histories of its emergence. As Keene argues then, "[r]ather than abandon one or the other of these cherished doctrines, they reconciled them through the now-familiar thesis that Grotius's theory had anticipated Westphalian practice."[129] The Peace of Westphalia, in Wheaton's conception, formalized "the epoch of the firm establishment of permanent legations, by which the pacific relations of the European states have since been maintained."[130] What is more, he writes, connecting Westphalia to Grotius, it also gave "a more practical character to the new science created by Grotius and improved by his successors."[131] Although "this doctrine rested on rather flimsy evidence,"[132] it indeed appears to have been a decisive factor in the erroneous association of Grotius with the Westphalian treaties.

By the late nineteenth century, international lawyers such as T.J. Lawrence were writing that the "leading principles" of *De Jure Belli ac Pacis* were recognised in the Peace of Westphalia."[133] In the early twentieth century, Amos S. Hershey sought to demonstrate the practical application of what he termed Grotius' "dogma"

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[129] *ibid.*

[130] Wheaton, *History of the Law of Nations,* p.71-2.

[131] *ibid.,* p.72. Keene also writes that "William Manning, similarly argued that Grotius 'had the happiness of being exactly adapted to the times in which he lived, for had he lived much earlier he would have found Europe unfitted for the reception of his doctrines; and his times required a mind like that of Grotius, the new relations of the European powers needing reference to settled principles for their guidance'." Keene, "Reception of Hugo Grotius", p.142; Manning, p.21.

[132] *ibid.,* Keene, p.146.

[133] T.J. Lawrence, *The Principles of International Law,* (London: Macmillan & Co., 1911), p.31.

of sovereignty during the negotiations that ultimately resulted in the Westphalian Peace Treaties.[134] Continuing this tradition, Hedley Bull proposed, more recently, that "Grotius may be considered the intellectual father of the first general peace settlement of modern times, just as Richelieu, who like Grotius died before the Peace came about, may be said to have created the political conditions that made it possible."[135] As such, herein lies a possible germ for Grotius' later association with international society in the works of Bull and others.

However, the modern concept of international society, discussed further in the following two chapters, did not itself emerge at the Peace of Westphalia but first appeared in the nineteenth century. In particular, the question of how sovereign states would be expected to submit themselves to international law, as suggested by the Congress of Vienna of 1815, remained unanswered in contemporary scholarship. It was in this context that the slogan *ubi societas ibi jus est* 'where there is society there is law', came to the fore,[136] thereby drawing the pre-modern relationship between the *jus gentium* and *societas gentium* evident in Grotius' works closer to the modern notion of the *Staaten-system* promulgated by writers

[134] Amos S. Hershey, "History of International Law Since the Peace of Westphalia", *American Journal of International Law,* Vol.6, No.1, (January 1912), pp.30-69.

[135] Hedley Bull, "The Importance of Grotius in the Study of International Relations", in *Hugo Grotius and International Relations,* ed. Hedley Bull, Benedict Kinsbury and Adam Roberts, (Oxford: Clarendon Press, 1990), p.75.

[136] Terry Nardin, *Law, Morality and the Relations of States,* (Princeton: Princeton University Press, 1983), p.28.

such as Heeren and, before him, Friedrich von Gentz.[137] Considered together, this international legal idea and the political notion of a states-system combined to form the modern concept of 'international society'.

The Three Traditions

In constructing their histories of the emergence of international law, writers such as Wheaton and, soon after him William Oke Manning, also brought together two different rival patterns of thought. The first is the natural law tradition discussed in the previous chapter and is ordinarily discussed in terms of the works of Samuel Pufendorf. Contrary to natural law, in its most general form, positive law contends that the law of nations is derived exclusively from the tacit agreements, conventions and treaties established between nations. However, as Terry Nardin points out, three main forms of positive law can be discerned in the history of the law of nations. The first maintains that positive law, otherwise known as 'law properly so-called', "is a set of rules distinguishable from revealed divine law, from rational morality (natural law), and from the moral conventions of any actual society."[138] As Richard Zouche, one of the foremost proponents of this understanding of positive law, writes;

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[137] Although, as Hedley Bull points out, these "two streams converged" in the writings of Emerich de Vattel, they only really came together with the writings of the nineteenth century international lawyers. Hedley Bull, "Society and Anarchy in International Relations", in *Diplomatic Investigations,* p.39.

[138] Terry Nardin, "Legal Positivism as a Theory of International Society", in *International Society: Diverse Ethical Perspectives,* ed. David R. Mapel and Terry Nardin, (Princeton: Princeton University Press, 1998), p.17.

> Law between Nations is the law which is recognized in the community of different princes or peoples who hold sovereign power – that is to say, the law which has been accepted among most nations by customs in harmony with reason, and that upon which single nations agree with one another, and which is observed by single nations at peace and by those at war.[139]

As discussed previously, this law of nations has a two-fold meaning. "In the first place", Zouche writes, "it is the common element in the law which peoples of single nations use among themselves"[140] and thus equates to a common form of civil law. In the second sense however, "it is the law which is observed in common between princes or people of different nations; since this law, as a jurist also says, nations are separated, kingdoms founded, commerce instituted, and lastly, wars introduced."[141] Thus, not unlike Suarez's distinction between the two forms of *jus gentium*, Zouche titles this latter form the *jus inter gentes*, what was known in Roman law as *jus feciale*. Thus, *jus inter gentes* "besides common customs", includes "anything upon which single nations agree with other single nations, for example by compacts, conventions and treaties...since the solemn promise of a state establishes law, and whole people, no less than single persons, are bound by their own consent."[142]

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[139] Richard Zouche, *Iuris et Iudicii Fecialis, sive, Iuris Inter Gentes, et Quaestionum de Eodem Explixatio (An Explication of Fecial Law and Procedure or of Law between Nations, and Questions concerning the Same: Wherein are set forth Matters regarding Peace and War between different Princes or Peoples, derived from the Most Eminent Historical Jurists)*, trans. J.L. Brierly, (Washington: Carnegie Institution, 1911), I.I., p.1.

[140] *ibid.*, I.I.1, p.1.

[141] *ibid.*

[142] *ibid.*, p.2.

Also a proponent of this variant of the positive legal tradition, Samuel Rachel's *Dissertations on the Law of Nature and of Nations* represents the most prominent refutation of Pufendorf's claim that no positive *jus gentium* exists as distinct from the *jus naturale.* Thus, in Rachel's 'First Dissertation', *On the Law of Nature,* Rachel, like Grotius, adopts Aristotle's division between natural and positive law.[143] Positive law, he writes, may also be termed 'arbitrary law' and comprises "all law of an arbitrary character, whether they are adopted as peculiarly suited to the needs of a given state, or of whatever other kind they may be."[144] Here applied to civil law, the distinction between natural and arbitrary, or positive law, also applies to the law of nations. As Rachel writes in *Of the Law of Nations;*

> Not only has Nature provided its own Law for men, whereby, as if by a world-wide chain, they are bound to one another in virtue of being men, but mankind has itself also laid down various positive laws for its own guidance, not merely those by which in every State the government binds its subjects to itself or by which these bind themselves to one another, but also those which the human race, divided up as it is into independent peoples and different States, employs as a common bond of obligation; and peoples of different forms of government and of different size lie under the control of these rules, which depend for their efficacy upon mutual good faith.[145]

[143] Samuel Rachel, *On the Law of Nature* in *Dissertations on the Law of Nature and of Nations,* trans. John Pawley Bate, (Washington: Carnegie Institution, 1916), I.II, p.2.

[144] *ibid.*

[145] *On the Law of Nations, ibid.,* II.I, p.157.

However, although he acknowledges the existence of both forms of law, Rachel continues to argue that the central precepts of the law of nature are ill-suited to the law of nations. This, he supposes, is fundamentally due to the fact that, "the Law of Nations is founded on the agreement of Nations."[146] For, as he writes, "Law can not but be set up by Agreement."[147]

However, the second definition of positive law that Nardin offers is far more restrictive in nature and contends that "authentic law is law declared or "posited" (Latin *positum*, decreed) by a superior but this-worldly authority, a sovereign lawmaker."[148] The most prominent proponent of this conceptualisation of positive law is undoubtedly John Austin. As H.L.A Hart writes, John Austin was a close associate and neighbour of Jeremy Bentham, the figure responsible for coining the term 'international law'. A fellow utilitarian – although self-avowedly less radical than Bentham – Austin shared with him a number of precepts critical to his theory of jurisprudence. First is the notion of command, that is "an expression of desire by a person who has the purpose, and some power, to inflict an evil in case the desire be disregarded."[149] Thus, Austin, writes that "[a] command…is a signification of desire…[that] is distinguished from other significations of desire by this peculiarity: that the party to whom it is directed is liable to evil from the other, in case he

[146] *ibid.*, II.II, p.157.

[147] *ibid.*

[148] Nardin, p.18.

[149] H.L.A. Hart, "Introduction" to John Austin, *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence,* (London: Weidenfeld and Nicholson, 1954), p.x.

comply not with the desire."[150] As such, the recipient of a command is 'bound' or 'obliged' to obey it and thus "[c]ommand and duty are...correlative terms."[151] The second precept of Austin's theory of jurisprudence pertains to what he terms the "habit of obedience."[152] "Laws properly so-called", Austin writes, "are commands" and can be divided into four types; divine laws, positive laws, positive morality and laws metaphorical or figurative.[153] The subject matter of that area of legal theory with which he is concerned, jurisprudence, "is positive law: law, simply and strictly so called: or law set by political superiors to political inferiors."[154] In particular, Austin argued that in the absence of a political superior in international society, international law is not positive law but rather a form of international morality. He writes that "the law obtaining between nations is not a positive law: for every positive law is set by a given sovereign to a person or persons in a state of subjection to its author."[155] Austin also says the following of Grotius:

> Grotius, Puffendorf, and the other writers of the so-called law of nations, have fallen into a similar confusion of ideas: they have confounded positive international morality, or the rules which actually obtain among civilized nations in their mutual intercourse, with their own vague conceptions of international morality as it *ought to be*, with that indeterminable something

[150] Austin, *ibid.*, I, p.14.

[151] *ibid.*

[152] Hart, p.x.

[153] Austin, I, p.1.

[154] *ibid.*, p.9.

[155] Austin, VI, p.201.

which they conceive it would be, if it conformed to that indeterminate thing they call the law of nature.[156]

Finally, the third notion of positive law Nardin discusses seeks to "defend international law against the view that law is an expression of sovereign will."[157] As will be seen in the following chapter, this task was undertaken most prominently by Hans Kelsen and H.L.A. Hart who, despite following Austin to a great extent, omitted the requirement of a sovereign superior from their understandings of law, thereby enabling international law to be viewed as a weak form of law.

For Wheaton however, Cornelius van Bynkershoek stands as the representative of the positivist tradition with his law of nations based on "reason and usage, *(ex ratione et usu)*" usage begin derived from "treaties and ordinances, *(pacta et edicta)*."[158] Drawing the positive and natural law traditions together, in Wheaton's estimation, is Christian von Wolff. Despite his later classification as a 'Grotian' however, Wheaton goes to some lengths to highlight the extent to which the relationship between the law of nature and the law of nations is distinct in Wolff and Grotius' works. First, he argues, while Grotius locates the origins of the voluntary law of nations in the positive agreements of states, thereby deriving a weak notion of obligation from consent, Wolff believes the law of nations to be "a law which nature has imposed upon all mankind as a necessary consequence of

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[156] *ibid.*, V, p.187.

[157] Nardin, p.18.

[158] Wheaton, *Elements*, I.I.6, p.8. Cornelius van Bynkershoek, *Quaestionum juris publici libri duo (On questions of public law in two books)*, trans. Tenney Frank, (Oxford: Clarendon Press, 1930).

their social union."[159] Secondly, and following from this, "Grotius confounds the voluntary law of nations with the customary law of nations."[160] Indeed, what distinguishes the voluntary law of nations from the customary law of nations in Wolff is the notion of universal obligation applicable to the voluntary and not necessarily to the customary. With this, Wheaton begins to establish a third tradition of international legal thought that, although derived from the works of Grotius, is distinct from the natural law tradition which he precipitated.

Following Wolff, Vattel modifies this understanding of the relationship between the law of nature and the law of nations, denying the existence of a naturally instituted *civitas maxima.* Distinguishing instead between the *necessary* law of nations and its *voluntary, conventional* and *customary* forms, Vattel maintains that "the Law of Nations, in its origin, is nothing but *the law of nature applied to nations.*"[161] Thus, although describing an alternative natural law derivation of the law of nations, Vattel too may be viewed in a similar vein as Wolff as combining Grotian natural law with positive elements.

The position of Grotius within this triumvirate is not made particularly clear in Wheaton's work. Although Grotius is seen as inspiring the 'mixed' tradition of Wolff and Vattel, he is also discussed in terms of the naturalist tradition. Here, despite being generally portrayed in a positive light, Grotius is criticised for failing

[159] *ibid.*, I.I.8, p.11.

[160] *ibid.*

[161] *ibid.*,I.I.9, p.12.

to locate the "origins of the Natural Law of Nations in the principle of utility."[162] As such, Wheaton settles with simply heralding Grotius the 'founder' of the 'science' of the law of nations, thereby doing away with the need to categorise him.[163] Nonetheless, this same pattern of categorisation is evident in a range of international law treatises of the nineteenth century from T.A. Walker and T.J. Lawrence to John Westlake.[164] However, as will be seen in the following chapter, it was with the work of Lassa Oppenheim that the triumvirate found its most prominent expression and the 'mixed' category's new title of 'Grotian' become conventionally accepted.

Grotian 'morality'

Despite the demise in popularity of Grotius' work in nineteenth century European scholarship, it was during this era that a number of pivotal steps in the emergence and development of the 'Grotian tradition' occurred in America. In particular, the influence of Grotius' works in the early years of the American Republic is considerable. Not only were his concepts of divisible sovereignty and the acquisition of unoccupied lands employed to justify the act of colonisation and the practices that went with it,[165] but, as both Bernard Bailyn and Philip A. Hamburger argue, the central precepts of his law of nature featured in the drafting of the

[162] *ibid.*, I.I.4, p.6.

[163] *ibid.*, I.I.2, p.3.

[164] Thomas Alfred Walker, *A History of the Law of Nations*, Vol.1, (Cambridge: Cambridge University Press, 1899); Lawrence, *Principles of International Law*, p.39; John Westlake, *The Collected Papers of John Westlake on Public International Law*, ed. L. Oppenheim, Cambridge: Cambridge University Press, 1914.

[165] For a discussion of this see Keene, *Beyond the Anarchical Society.*

American Constitution.[166] What is more, the leading political figures of the time Benjamin Franklin, Thomas Jefferson, Alexander Hamilton and John Adams all highly endorsed and recommended the reading of Grotius' works.[167] For example, in his "Proposals Relating to the Education of Youth in Pennsylvania" Benjamin Franklin argued that in "Questions of Right and Wrong, Justice and Injustice" youth ought to be acquainted with the works of Grotius and Pufendorf in order to resolve disputes.[168] Similarly, a young Alexander Hamilton, then a student at King's College New York, wrote in response to a letter from A.W. Farmer concerning the controversy between Great-Britain and her American colonies;

> I shall, henceforth, begin to make some allowance for that enmity, you have discovered to the *natural rights* of mankind. For, though ignorance of them in this enlightened age cannot be admitted, as a sufficient excuse for you; yet it ought, in some measure to extenuate your guilt. If you will follow my advice, there still may be hopes of your reformation. Apply yourself, without delay, to the study of the law of nature. I would recommend for your perusal, Grotius, Puffendorf, Locke, Montesquieu, and Burlemaqui. [169]

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[166] Bernard Bailyn, *The Ideological Origins of the American Revolution, Enlarged Edition,* (Cambridge, MA; The Belknap Press of Harvard University Press, 1992), p.27,43, 150 & 205; Philip A. Hamburger, "Natural rights, natural law and American constitutions", *Yale Law Journal,* Vol.102, No.4, (January 1993), pp.907-960.

[167] Significantly, all these figures also appear in Martin Wight's rationalist category alongside Grotius himself. See Martin Wight, *International Theory: The Three Traditions,* ed. Gabriele Wight and Brian Porter, (London: Leicester University Press, 1991), p.14.

[168] Benjamin Franklin, "Proposals Relating to the Education of Youth in Pennsylvania" (1749) in *The Papers of Benjamin Franklin,* Vol.3, January 1, 1745 through June 30, 1750, ed. Leonard W. Labaree, (New Haven: Yale University Press, 1961), p.413-414.

[169] Alexander Hamilton, "Farmer Refuted, &c" New York, February 23, 1775, in *The Papers of Alexander Hamilton,* Vol.1, 1768-1778, ed. Harold C. Syrett, (New York: Columbia University Press, 1969), p.86.

Indeed, the works of Grotius were consulted by such prominent figures on a range of issues, both scholastic and practical in nature. Thomas Jefferson drew on his works, along with those of Pufendorf and Wolff, in his public paper on the French Treaties, not to mention at numerous other places in his work.[170] Indeed, this particular discussion of Grotius in Jefferson's work was also picked up and commented upon by Alexander Hamilton as he sought to apply it to the question of obligation in the interpretation of treaties.[171] Similarly, Hamilton also draws on Grotius in a letter to George Washington regarding the right of passage[172], while John Adams and Thomas Jefferson were engaged in a long-running debate over the translation of certain Greek tracts in Grotius' works.[173] However, although these figures all contributed to the elevated profile of Grotius in American scholarship and, in many instances, came to associate his works with questions of justice and morality, as in Franklin's proposal, it was not until the works of James Kent and Henry Wheaton that a fully-fledged notion of 'Grotian morality' emerged.

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[170] Thomas Jefferson, "Opinion on the French Treaties" April 28, 1793, in *Writings,* (New York: The Library of America, 1984), p.428.

[171] Alexander Hamilton, "Answer to Question 3d. proposed by the President of the UStates, April 18th, 1793 viz", in *The Papers of Alexander Hamilton,* Vol. XIV, February 1793-June 1793, p.380-2.

[172] Alexander Hamilton to George Washington, New York September 15th, 1790, in *The Papers of Alexander Hamilton,* Vol.VII, September 1790 – January 1791, p.38-9.

[173] *The Adams-Jefferson Letters: The Complete Correspondence Between Thomas Jefferson and Abigail and John Adams,* ed. Lester J. Capon, (Chapel Hill: University of North Carolina Press. 1959), p.365, 370-1 & 381.

James Kent (1763-1847) is best known as the Chancellor of the State of New York, Professor of Law at Columbia University and the author of the 'first great American law treatise', the four volume *Commentaries on American Law* (1826-1830).[174] Although not a work of international law, Kent's *Commentaries* begins with a two hundred page exposition on the law of nations that makes a two-fold contribution to the development of 'Grotian' scholarship and the later Grotian tradition. In the first instance, in Kent's history of the law of nations we see the same tripartite division of international law into its constituent natural, positive and mixed (later 'Grotian') forms that emerged in the late eighteenth century and continues to inform the Grotian tradition in the twentieth century. Endorsing the middle road, Kent writes;

> The most useful and practical part of the law of nations is, no doubt, instituted as positive law, founded on usage, consent, and agreement. But it would be improper to separate this law entirely from natural jurisprudence, and not to consider it as deriving much of its force, and dignity, and sanction, from the same principles of right reason, and the same view of the nature and constitution of man, from which the science of morality is deduced.[175]

Although elements included in his further exposition of the 'mixed' form of international law are certainly cognisant with Grotius' ideas, for example the claim that "[s]tates, or bodies politic, are to be considered as moral persons, having a public will, capable and free to do right and wrong, inasmuch as they are collections

[174] Janis, p.38.

[175] James Kent, *Commentary on American Law*, (New York, 1836), p.2.

of individuals,"[176] the category is at no time identified as 'Grotian'. Rather, as will be seen, the term 'Grotian' is used to designate a form of ethics that combined Christian values of brotherly love and charity with the law of nations.

In Kent's *Commentaries* therefore, the term 'Grotian' is defined in direct association with the historical figure of Hugo Grotius despite diverging from Grotius' ideas in one critical area. Heaping praise upon him, Kent views Grotius as a moral crusader, writing that he has "justly been considered as the father of the law of nations; and he arose like a splendid luminary dispelling darkness and confusion, and imparting light and security to the intercourse of nations."[177] As Mark Weston Janis argues, "Grotius was attractive to Kent...because Grotius recognized that there was an inevitable conflict between the awful reality of war and the Christian ideal of universal love and brotherhood."[178] Indeed, Kent describes the 'Grotian ethic' as standing "in favour of the natural law of morality" and arguing that "justice was of perpetual obligation, and essential to the well being of every society, and that the great commonwealth of nations stood in need of law, and the observance of faith, and the practice of justice."[179]

According to Kent, the "object of Grotius" was to correct the false doctrines of war that he saw prevailing about him;

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[176] *ibid.*

[177] *ibid.*, p.15.

[178] Janis, p.44.

[179] Kent, p.15.

> ...by showing a community of sentiment among the wise and learned of all nations and ages in favour of the natural law of morality. He likewise undertook to show that justice was of perpetual obligation, and essential to the well being of every society, and that the great commonwealth of nations stood in need of law, and the observance of faith, and the practice of *justice*.[180]

The sense of 'Grotian morality' Kent promulgates is explained as follows:

> We ought not, therefore, to separate the science of public law from that of ethics, not encourage the dangerous suggestion, that governments are not so strictly bound by the obligations of truth, justice, and humanity, in relation to other powers, as they are in the management of their own local concerns. States, or bodies politic, are to be considered as moral persons, having a public will, capable and free to do right and wrong, inasmuch as they are collections of individuals, each of whom carries with him into the service of the community the same binding law of morality and religion which ought to control his conduct in private life.
>
> The law of nations is a complex system, composed of various ingredients. It consists of general principles of right and justice, equally suitable to the government of individuals in a state of natural equality, and to the relation and conduct of nations; of a collection of usages and customs, the growth of civilization and commerce; and of a code of conventional or positive law. In the absence of these latter regulations, the intercourse and conduct of nations are to be governed by principles fairly to be deduced from the rights and duties of nations, and the nature of moral obligation; and we have the authority of the lawyers of antiquity, and of some of the first masters in the

[180] *ibid.*, p.15.

> modern school of public law, for placing the moral obligation of nations and of individuals on similar grounds, and for considering individual and national morality as parts of one and the same science.[181]

Critically however, despite naming it 'Grotian', Kent does not consider this morality, or indeed international law that is derived from it, as universal. Rather, contrary to Grotius' desire for universality, he argues that "the Christian nations of Europe, and their descendants on this side of the Atlantic, by the vast superiority of their attainments in arts, and science, and commerce, as well as in policy and government; and above all, the brighter light, the more certain truths, and the more definite sanction, which Christianity has communicated to the ethical jurisprudence of the ancients, have established a law of nations peculiar to themselves."[182] Together, he writes, these Christian nations of Europe and America form a Christian 'community of nations'.

By arguing against the universality of the law of nations and making Christian ethics one of its central components, Kent attempts to achieve the inclusion of the United States within what was known to be the 'civilised world'. By doing so, he reasons that the new republic's precarious sovereignty might be recognised by the nations of Europe.[183] Furthermore, as Janis argues, "Kent was employing Christianity generally and the Grotian ethic particularly to grapple with one of

[181] *ibid.*, p.2-3.

[182] *ibid.*, p.3-4.

[183] Janis, p.49.

international law's most troublesome open questions, its efficacy."[184] Again, by describing the law of nations in terms of Christianity, Kent was able to explain that the "positive substantive rules of international law" are based upon "a moral procedural foundation."[185] However, this response did not bring the debate to a close and when Henry Wheaton published his most famous work some years later it had intensified significantly.

When Henry Wheaton published his *Elements of International Law* in 1836, John Austin's *The Province of Jurispridence Determined* was exerting a significant influence on the perceived efficacy of international law. Unlike many of his contemporaries however, Wheaton did not respond to Austin's criticisms of international law by 'sheltering' "in the observation that the 'sanction' of international law is war or the State's own protection of its self-interest"[186] but agreed, to some extent at least, that international law was 'positive morality'. As with Kent, Christianity is afforded a position of primacy in Wheaton's work and, as such, "the practical observance of the rules of justice among states" was indicative of the existence and efficacy of international law.[187] In particular however, it is Hugo Grotius who is attributed with bringing about "a most salutary change in the practical intercourse of nations in favour of humanity and justice."[188] As Wheaton continues, this 'salutory change' has created within the "international intercourse of

[184] *ibid.*

[185] *ibid.*

[186] Janis, p.53.

[187] Wheaton, *Elements*, p.iv.

[188] *ibid.*, p.30.

Europe, and the nations of European descent...superior humanity, justice and liberality."[189] However, what is critical here is that this "humanity, justice and liberality" is indeed, 'superior' because it applies only to Europe and other civilized nations. Indeed, Wheaton goes so far as to limit the scope of his work to the "general principles which may fairly be considered to have received the assent of most civilized and Christian nations."[190] Thus, in a similar, although more strictly applied manner to Kent, Wheaton also maintains that the law of nations is not truly universal but only applies to 'civilised' nations. He asserts that public international law "has always been, and still is, limited to the civilised and Christian people of Europe or to those of European origin."[191] Making his point even more firmly he writes;

> There is then, according to these writers, no universal, immutable law of nations binding upon the whole human race – which all mankind in all ages and countries ancient and modern, savage and civilised, Christian and pagan, have recognised in theory or in practice, have professed to obey, or have in fact obeyed.[192]

Thus, for Wheaton, to be 'Grotian' meant adhering to an understanding of the law of nations that was based on a form of vague Christian ethics that promoted notions of justice and humanity.

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[189] *ibid.*

[190] *ibid.*, p.iii.

[191] Wheaton, I.I.11, p.15.

[192] *ibid.*, p.44.

Conclusion

In accordance with the very notion of what is constituted by an 'historical' tradition, the 'Grotian' scholarship of Pufendorf, Wolff, Vattel and, indeed Grotius himself, entertain a single vision of what is meant by the term 'Grotian'. Although not specified in such explicit terms, in the works of Grotius and his immediate successors, the term 'Grotian' pertains directly to the historical figure of Hugo Grotius. 'Grotian' ideas, although not necessarily absolutely cognisant with those of Grotius himself, retain an explicit connection to him and simply appear in an altered or developed form in these later works. Thus, although Pufendorf seeks to reconcile Grotius' works with precepts of Hobbesian natural law thus imbuing it with a sense of obligation, Wolff distinguishes firmly between the 'necessary' and 'voluntary' law of nations, and Vattel further develops those ideas contained in Wolff, all self-consciously viewed themselves as 'following' Grotius, or continuing his work in some way. However, with Vattel came the end of the historically constituted 'Grotian tradition' and a singularly defined conception of the 'Grotian'. From this time on, as an analytically constructed classification device, the term 'Grotian' assumed a wide variety of guises largely dictated by the purpose of schemes in which it is conceived.

Indeed, by the work of Henry Wheaton, the term 'Grotian' was already set to be dually defined. Although the 'mixed' category of Wheaton's scheme was later to become an analytically conceived 'Grotian' category, from the outset there is little sense of the epistemological effects of schematising international legal thought in

this manner. Thus, the sense in which the 'three traditions' of international law are in fact 'traditions' is not considered. As will be seen in the following chapter, this pattern of scholarship has been perpetuated in international legal thought, reaching the status of conventional wisdom by the twentieth century works of Lassa Oppenheim and Arthur Nussbaum. Indeed, it is only with the much later work of Hersch Lauterpacht that the implications of dividing the history of international law in this manner are considered. However, of equal or greater significance to the substantive contents of the twentieth century Grotian traditions, in particular Lauterpacht's seminal construction, is the emphasis on 'Grotian morality' evident in the works of Wheaton and Kent. As will be seen in the following chapter, by refocusing the attention of Grotian scholarship on Grotius' understanding of morality, Wheaton and Kent foregrounded the more substantial revival of Grotius' works that began with the turn of the twentieth century.

V

The Emergence of the 'Grotian Tradition' in Twentieth Century International Thought

> In Europe, Grotius's work was not esteemed in the latter part of the eighteenth and former part of the nineteenth century, when "state sovereignty" was the watchword, and international law a garment which the nations tore and threw off whenever it suited their interests to do so. But its importance increased when the peace movement became stronger (1871), and when the Hague Peace Conferences and the League of Nations meetings came near.[1]

The 'Grotian tradition of international law' emerged in the 1940s at a time when the status of international law and, in particular, its ability to regulate the incidence and conduct of war, was in dire need of revival. In the world of international relations, the preceding fifty years had seen two Hague Conventions in 1899 and 1907, the collapse of the balance of power system and subsequent outbreak of World War One, the formation and dissolution of the League of Nations and, of course, the horrors of the Second World War. At the same time, International Relations witnessed its formal inception as a scholarly discipline, the emergence of idealism

[1] Cornelius van Vollenhoven, "Grotius and the Study of Law", *American Journal of International Law*, Vol.19, No.1, (1925), p.5.

in international thought and its succession by realism, complete with its sceptical appraisal of the efficacy of international law and the position of morality within it.

Thus, when Hersch Lauterpacht set about devising a set of fundamental principles central to the regulation of war by law under the broad banner of the 'Grotian tradition of international law', he sought to "find a place for law in a dangerous time."[2] However, the position of law, and indeed morality within it, was not simply made 'dangerous' by the tumultuous international political climate of the time but, in intellectual terms, by the overwhelming predominance of realist thought in International Relations scholarship and legal positivism in international law. Indeed, although they are rarely referred to in International Relations scholarship, Lauterpacht wrote a number of papers addressing what he believed to be the fundamental problems of realism, in particular that variant espoused by E.H. Carr.[3] As will be seen, these writings provide us with a number of important clues about Lauterpacht's thinking during the period in which the 'Grotian tradition' was devised and, in particular, how he conceived the relationship between law and morality.

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[2] Martti Koskenniemi. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960,* (Cambridge: Cambridge University Press, 2001), p.355; Hersch Lauterpacht, "The Grotian Tradition in International Law", *British Yearbook of International Law,* Vol.23, No.1, (1946), pp.1-53.

[3] Hersch Lauterpacht, "On Realism, Especially in International Relations", in *International Law Being the Collected Papers of Hersch Lauterpacht,* ed. E. Lauterpacht, Vol.2, The Law of Peace, Part I, International Law in General, (Cambridge: Cambridge University Press, 1975), pp.52-66; "Professor Carr on International Morality", pp.67-92; E.H.Carr, *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations,* ed. Michael Cox, (Houndmills: Palgrave, 2001).

This chapter is divided into three sections. The first section discusses the resurgent interest in Grotius' works that accompanied the Hague Conventions of 1899 and 1907, the formation of the Grotius Society and the establishment of the League of Nations. In particular, the turpitude of 'Grotian morality' is again stressed, this time by Cornelius van Vollenhoven whose attempt to rescue Grotius from the continued dominance of Vattel signaled the re-entry of Grotius to mainstream International Relations scholarship. The second section discusses the contending conceptualisations of the relationship between law and morality provided by the contending realist and idealist, and natural law and legal positivist perspectives. In doing so, it outlines the two most prominent intellectual debates in which Lauterpacht engaged in constructing the Grotian tradition of international law. Finally, the third section then outlines the central precepts of Lauterpacht's Grotian tradition. In doing so, it highlights the existence of two distinct understandings of the term 'Grotian' in Lauterpacht's writings, neither of which is self-consciously conceived in terms of a well considered conceptualisation of 'tradition' itself. The first is distinctly analytical in constitution and is derived from that mode of scholarship evident in the works of Wheaton and Oppenheim in which the term 'Grotian' simply refers to the intermediary category of international legal thought that stands between the natural and positive law traditions. However, this is juxtaposed with an alternative understanding of the term 'Grotian' that is derived explicitly from the works of Hugo Grotius himself and is primarily concerned with the position of morality in international law. As will be seen in the following

chapter, that Lauterpacht entertained two visions of what it means to be 'Grotian' is of particular importance to its subsequent incarnations in the works of Martin Wight and Hedley Bull.

The 'Grotian' Revival

The late nineteenth century represents perhaps the lowest point in the development of the 'Grotian tradition'. Indeed, while earlier in the century, American scholars such as Kent and Wheaton had returned once more to Grotius to justify the new republic's inclusion in the 'civilised world', his status continued to decline in European scholarship. In particular, Grotius suffered further irreparable damage at the hands of the legal positivism of writers such as W.E. Hall and Sir Robert Phillimore.[4] Furthermore, although the late nineteenth century saw the rise to prominence of the modern concept of international society later associated with Grotius and, in particular, the slogan *ubi societas ibi ius est*, its central proponents showed little interest in Grotius himself. In Westlake's estimation;

> states form a society, the members of which claim from each other the observance of certain lines of conduct, capable of being expressed in general terms as rules, and hold themselves justified in mutually compelling such observance, by force if necessary; also that in such society the lines of conduct in question are observed with more or less regularity, either as the result of compulsion or in accordance with the sentiments which would

[4] William Edward Hall, *A Treatise on International Law*, 4th ed. (Oxford: Clarendon Press, 1895); Sir Robert Phillimore, *Commentaries upon International Law*, (London: Butterworths, 1871).

> support compulsion in case of need. It is an old saying, *ubi societas ibi jus est;* "where there is society there is law."[5]

Contrary to conventional claims that place the emergence of the society of states at the Peace of Westphalia, Westlake contends that international society originated prior to 1648.[6] Thus, Westphalia is credited with the completion and consecration of an already emergent international society. Extending this notion, Westlake further elucidates the relationship between states and individuals in international society;

> The society of states, having European civilisation, or the international society, is the most comprehensive form of society among men, but it is among men that it exists. States are its immediate, men its ultimate members. The duties and rights of states are only the duties and rights of the men who compose them.[7]

Thus, contrary to the 'domestic analogy' apparent in Grotius' works, whereby states and individuals are considered morally equivalent via the imposition of human characteristics upon the state, Westlake contends that individuals are the ultimate members of international society purely because they are what comprise states. Furthermore, this international society is, in its original form, an explicitly European society and, as such, the international law to which Westlake refers is more accurately the public law of Europe, *Droit public de l'Europe.* Thus,

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[5] John Westlake, *The Collected Papers of John Westlake on Public International Law,* ed. L. Oppenheim, (Cambridge: Cambridge University Press, 1914), p.2.

[6] *ibid.*, p.55.

[7] *ibid.*, p.78.

following its spread, international society is said to include all European states, all American states which, "on becoming independent, inherited the international law of Europe" and, finally, "a few Christian states in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."[8] Despite engaging a range of concepts also apparent in Grotius' works and his later categorisation as a 'Grotian' for his fusion of natural and positive law, Westlake did not really discuss Grotius' works or use the term 'Grotian' itself. Indeed, although he exerted a significant influence on the writings of Lauterpacht and Wight, Westlake inadvertently contributes to the marginalisation of Grotius' works in international legal scholarship by unceremoniously relegating him to the annals of history.

The revival of Grotius' popularity in the fields of international relations and international law was heralded by the proceedings of the first Hague Convention held in 1899. Here, for the first time, Grotius came to be associated with the concept of international arbitration, although the connection is a spurious one derived from a single line of the tome that is *De Jure Belli ac Pacis:*

> As in making peace, it scarcely ever happens that either party will acknowledge the injustice of his cause, or of his claims, such a construction must be given as will equalize the pretensions of each side.[9]

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[8] *ibid.*, p.81-2.

[9] Dorothy V. Jones, *Toward a Just World: The Critical Years in the Search for International Justice*, (Chicago: University of Chicago Press, 2002), p.3.

Although this fairly obscure line of his work is referred to, little evidence exists to suggest that Grotius was anything more than a figure-head, a great classical theorist whose desire to limit the incidence and severity of war was particularly cogent to the aspirations of the delegates in attendance. Nonetheless, his association with the Hague Conventions was marked by a ceremony in his honour:

> ...the ceremony to place the wreath upon the tomb of Grotius took place on the 4th of July, in the Nieuwe Kerk, in the city of Delft. Representatives from the various delegations in the conferences were present. Outside, the winds raged and the rain beat furiously, as if nature were trying to remind the assemblage of the storm and stress in which the life of the honoured dead was passed. Within, the great organ poured out its wonderous tones, and at eleven o'clock the ceremony began.[10]

Thus, although the works of Kent and Wheaton had kept 'Grotian' scholarship simmering in the background of nineteenth century international legal scholarship, this marked the beginning of the revival of Grotian scholarship in international relations and international law.

In the twenty years that followed, Grotius' profile continued to rise. In 1901 A.C. Campbell published a much needed English translation of *De Jure Belli ac Pacis* under the title of *The Rights of War and Peace* and, although it only appeared in 1925, the Carnegie Endowment commissioned a further translation by Francis W.

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[10] Hamilton Vreeland, *Hugo Grotius, The Father of the Modern Science of International Law*, (New York: Oxford University Press, 1917), p.239-40.

Kelsey in 1910.[11] Furthermore, despite the grave damage his outwardly positivist approach afforded Grotian scholarship, the publication of Lassa Oppenheim's *International Law: A Treatise* with its discussion of the analytically conceived Grotian tradition similarly helped to raise its profile. However, the biggest boost to Grotian scholarship during this period was heralded by the establishment of the 'Grotius Society' and the publication of Cornelius van Vollenhoven's *The Three Stages in the Evolution of the Law of Nations* in 1919.[12]

The Grotius Society

> Had I consulted my feelings I would have laid the wreath on the tomb of the illustrious dead in silence, for I despair of finding words which can express the emotions called up in those who are privileged to stand upon this sacred spot. But it has been decided that such a course would not be right, and that as President of a Society specially formed to maintain the principles proclaimed by Hugo Grotius, I must seek the words to express the feelings of that Society to one of the most famous citizens of Delft. Hugo Grotius, Jurist – Poet – Theologian and Statesman. The man who, in the midst of all the horrors and barbarities of the Thirty Years' War, asserted the rights of humanity and civilization.[13]

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[11] Hugo Grotius, *The Rights of War and Peace,* trans. A.C. Campbell, (Washington & London: M. Walter Dunne, 1901); *De Jure Belli ac Pacis Libri Tres,* trans. Francis W. Kelsey with the Collaboration of Arthur E.R. Boak, Henry A. Saunders and others, (Oxford: Clarendon Press, 1913). Prior to Campbell, William Whewell had published a highly unsatisfactory abridged translation of *De Jure Belli ac Pacis* derived from the Barbeyrac edition. William Whewell, *Grotius on the rights of war and peace, an abridged translation,* (Cambridge: Cambridge University Press, 1853).

[12] Cornelius van Vollenhoven, *The Three Stages in the Evolution of the Law of Nations,* (The Hague: Martinus Nijhoff, 1919).

[13] Sir Graham Bower, President of the Grotius Society, paying tribute at the tomb of Hugo Grotius, *TGS,* Vol.7, (1921), p.xxxix-xli.

The 'Grotius Society' was established in 1914 in response to the outbreak of World War I. As the first vice-president of the Society, the Regius Professor of Civil Law at the University of Oxford, Henry Goudy remarked in his opening introduction to the Society's inaugural meeting in 1915, "[t]he object of founding the Society has been to afford an opportunity to those interested in International Law or discussing from a cosmopolitan point of view the acts of the belligerent and neutral States in the present war, and the problems to which it is almost daily giving birth."[14] Further extrapolating its purpose, Goudy writes;

> Its intention is to treat all international questions in an absolutely independent spirit, endeavouring to discover the truth whatever it may be, to discuss all the doctrines of International Law, to examine them in the light of the present war, and to suggest reforms based on humanity and justice wherever possible. It is the welfare of the commonwealth of nations, if one may use the expression, not of any one nation or group of nations, that the Society will seek to secure. For International Law, if it is to have any enduring authority, must be based on the fundamental principles of human rights and must give effect to the common welfare of nations.[15]

The position of Hugo Grotius within the Grotius Society is a somewhat precarious one. The name the 'Grotius Society' was settled on as Grotius was thought to be the "admitted founder of public International Law...the first, as he justly claims for himself, to envisage and expound it as a system and base it on solid foundations."[16]

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[14] Henry Goudy, "Introduction", *TGS*, Vol.1, (1915), p.1.

[15] *ibid.*

[16] *ibid.*, p.1-2.

As Goudy continues, "[t]hough much of the "De Jure Belli ac Pacis" is now antiquated, and many of its notions about natural law and *jus gentium* can no longer be accepted, that great work must ever be regarded as the *matrix* of our science, and must be resorted to for the statement of fundamental truths."[17] However, as Goudy remarked in his introduction to the second edition of *Transactions of the Grotius Society*, 'no attempt' had been made "to estimate the character of Grotius's writings nor the Grotian system as a whole" and, although the first of these omissions received some degree of attention in subsequent volumes of the journal, any attempt to discuss the 'Grotian system' as a whole is conspicuously absent from its publications.[18] Thus, publications referring to Grotius were generally concerned with biographical details.[19] In the main however, the Grotius Society publications were concerned with questions of international law and paid relatively little attention to the namesake of their association.

Although its focus shifted during its forty-five year existence, the subtitle of its journal, *Transactions of the Grotius Society* changing from *Problems of the War* to

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[17] *ibid.*, p.2.

[18] Henry Goudy, "Introduction", *TGS*, Vol.II, (1916), p.xvii.

[19] G.N. Clarke, "Grotius's East India Mission to England", *TGS*, Vol.20, (1934), pp.45-84; Pieter Geyl, "Grotius", *TGS*, Vol.12, (1926), pp.81-97; W.S.M. Knight, "Grotius in England: His Opposition There to the Principles of the *Mare Liberum*" *TGS*, Vol.V, (1919), pp.1-38; W.S.M. Knight, "Hugo Grotius: His Family and Ancestry", *TGS*, Vol. VI, (1921), pp.1-24; W.S.M. Knight, "The Infancy and Youth of Hugo Grotius", *TGS*, Vol.VII, (1922), pp.1-32; W.S.M. Knight, "Grotius' Earliest Years as a Lawyer", *TGS*, Vol.8, (1922), pp.1-20; R.W. Lee, "The Family Life of Grotius", *TGS*, Vol.20, (1934), pp.11-24; R.W. Lee, "Grotius – The Last Phase, 1635-45", *TGS*, Vol.31 (1945), pp.193-215; John Macdonnell, "The Influence of Grotius", *TGS*, Vol.5, (1920), pp.xvii-xxv

Problems of Peace and War in 1919[20] and again to *Problems of Public and Private International Law* in 1946, the central driving force of the Society remained fairly constant. Thus, on the twenty-fifth anniversary of its establishment, W.R. Bisschop argued in his retrospective address, "Grotius Society 1915-1940";

> The circumstances in that first year are not much different from those prevailing now. The same belligerents who then waged war against each other are again each others' mortal enemies....The same manner of warfare followed in those days is followed now, only to an intensified degree, and the same complaints of violations of rules of international law are raised in 1940 as they were then and for the same reason.[21]

In light of this, Bisschop reiterates the object of the Grotius Society that appears in Henry Goudy's speech above. Despite this general statement of purpose, the 'Grotius Society' did not promote any specific perspective on the position of international law in international relations, but rather sought to facilitate dialogue and debate between a range of views.

The Grotius Society boasted an illustrious membership during its period of operation. Amongst its founding members were T.J. Lawrence, whose works particularly influenced the later Grotian writings of Martin Wight and Hedley Bull, and G.G. Phillimore whose 'Phillimore Committee', appointed by British Prime Minister Lloyd George in 1917 to draft a proposal for the establishment of the League of Nations, produced the 'Cecil Draft' which was taken to negotiations in

[20] See Editorial Note, *TGS,* Vol.V, (1919), p.v.

[21] W.R. Bisschop, "Grotius Society 1915-1940", *TGS,* Vol.26, (1940), p.ix.

Paris. In 1916, J.A. Hobson, author of *Towards International Government* became a member of the Society and was joined shortly after by Coleman Phillipson. In 1919, four particularly significant honourary memberships were granted to President Woodrow Wilson, mastermind of the 'Fourteen Points' that heralded the foundation of the League of Nations and facilitated the rise to prominence of what became known as 'idealist' thought in international relations, the international lawyer responsible for many of the Carnegie Endowment's publications in the history of international law, James Brown Scott, General Jan Smuts, the Prime Minister of South Africa and author of *The League of Nations: A Practical Suggestion*, and Senator Elihu Root. In subsequent years, membership was extended to James L. Brierly, Arnold D. McNair, Gilbert Murray, Hersch Lauterpacht, Ellery Stowell, David Davies, Alfred Zimmern, Wilfred Jenks, Georg Schwarzenberger, Cecil Hurst and B.C.J. Loder of the Permanent Court of International Justice, and Elihu Lauterpacht. Two critical points are immediately apparent here. First is the wide range of views presented by these associates and second is the number of writers subsequently classified as 'idealist' within this lineup. As such, rather than attempting to form the multifarious ideas presented within the scope of the Grotius Society meetings and publications in a single coherent doctrine, more is to be gained from looking at its members both individually and within the wider international legal debates in which they themselves were engaged.

> Grotius's Law of Nations stands at the door, and it knocks. For three hundred years we have let it knock. Now it is getting too strong for us, we have not yet turned the key, but the bolts have been drawn.[22]

Although his nationality precluded van Vollenhoven from membership of the Grotius Society, the society records indicate that he nevertheless attended a number of its meetings in an unofficial capacity. As the scholar who exerted the most significant impact on the revival of Grotian scholarship prior to Hersch Lauterpacht, it is not surprising that he was granted some sort of guest status. In 1918 van Vollenhoven published a short (98 pages) text in Dutch, the English title of which reads *The Three Stages in the Evolution of the Law of Nations.* As P.H. Kooijmans writes, the work was "an incredible success: it was twice reprinted in its Dutch version and was translated into French, German and English."[23] The success of this work is even more surprising when its contents are considered. The work essentially constitutes an attempt to restore the status of Hugo Grotius' work in the face of its demise at the hands of Emerich de Vattel. As van Vollenhoven writes, indicating his preference for Grotius, "the Dutchman is called Hugh (Huig in Dutch), a bluff and sturdy name; the other is called Emeric: the name of a balletmaster", adding that the latter's work constitutes a "misshapen conglomeration of hypocrisy and cynicism."[24] It is a sentiment with which Lauterpacht broadly agrees, warning those

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[22] Cornelius van Vollenhoven, *Three Stages in the Evolution of the Law of Nations,* (The Hague: Martinus Hijhoff, 1919), p.98.

[23] P.H. Kooijmans, "How to Handle the Grotian Heritage: Grotius and van Vollenhoven", *Netherlands International Law Review,* Vol.XXX, (1983), p.81.

[24] van Vollenhoven, *Three Stages,* p.26.

"who look forward to a natural law revival of international law" that, "after all, natural law has produced not only Grotius but Vattel."[25]

As Kooijman notes, after the Second Hague Peace Conference in 1907, van Vollenhoven had become "an active crusader for the establishment of...an international police force,"[26] and even went so far in his endeavour as to make "an emotional appeal" to the Dutch government to propose such a measure and, further to this, to initiate a Third Peace Conference to be held in 1915.[27] When, in 1914, with the outbreak of the First World War, plans for a third conference were made redundant, van Vollenhoven turned his attention to Grotius for inspiration. As he would write some years later of *De Jure Belli ac Pacis,* "No book on international law written since Grotius radiates so much love, inspires so much confidence and restfulness to the soul as his book does."[28] He explains his attraction to Grotius as follows:

> States should not be at liberty to do good or evil, but their actions should be judged by strict rules of what is just and unjust; hostile engagements between states may no longer be a game of war, but a crime crying out for punishment; such is Grotius' most earnest conviction. This is what his whole book, entitled: 'on the rights of war and peace' aims at.[29]

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[25] Hersch Lauterpacht, "Kelsen's Pure Science of Law", in *International Law Being the Collected Papers of Hersch Lauterpacht,* ed. E. Lauterpacht, Vol.2, (Cambridge: Cambridge University Press, 1975), p.428.

[26] Kooijmans, p.83.

[27] *ibid*

[28] van Vollenhoven, "Grotius and the Study of Law", p.7.

[29] van Vollenhoven, *Three Stages,* p.15.

From Grotius' work then, van Vollenhoven derives what he terms "Grotius' theorem" which consists of four doctrines.[30] First is the "doctrine of duties" which states that in matters of justice, states and individuals are morally equivalent. Secondly, "Grotius advocated a worldwide rule of law" in an attempt to bring an end to the lawlessness he witnessed around him.[31] Thirdly, unlike the 'Grotians' of the nineteenth century such as James Kent and Henry Wheaton, Grotius did not conceive the law of nations as only applicable to 'civilised' Christian or European states. Finally, in accordance with his notions of *caritas* and *temperamenta*, "Grotius advocated the duty of altruism and charity among nations."[32] Considered together then, van Vollenhoven's "Grotian theorem" maintains that war is an instrument of punishment.[33] It is with this in mind then, that he casts President Woodrow Wilson as the foremost contemporary 'Grotian' for his following statement;

> ...our motive will not be revenge, or the victorious assertion of the physical might of the nation, but only the vindication of human right...Neutrality is no longer feasible or desirable where the peace of the world is involved. We have seen the last of neutrality in such circumstances.[34]

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[30] Cornelius van Vollenhoven, "Grotius and Geneva", *Bibliotheca Visseriana,* Vol.6, No.1, (1926), p.21.

[31] Kooijmans, p.82.

[32] *ibid.*

[33] *ibid.*

[34] Woodrow Wilson quoted in "Grotius and Geneva", p.30.

Combining Wilson's vision with his own reading of Grotius then, van Vollenhoven's 'three stages' culminate with the formation of the League of Nations and establishment of a new world order which it was hoped to entail. Following the realisation of its establishment, van Vollenhoven again sought to draw a direct association between Grotius and the League of Nations, writing that "Grotius's conception materially coincides with the platform of the American League to Enforce Peace (1915), the Covenant of the League of Nations (1919) and, above all, the Geneva Protocol (October 2, 1924)."[35]

However, van Vollenhoven's use of Grotius has faced stringent criticism, most notably in Johanna Oudendijk's "Van Vollenhoven's 'The Three Stages in the Evolution of the Law of Nations'. A case of wishful thinking." Here Oudendijk argues that "instead of erecting on Grotius' foundations a superstructure of his own he, *instilled* his own ideas into the existing argument and then presented the whole as Grotius' work."[36] Although, Oudendijk is correct in her observation here, it is a method to which van Vollenhoven freely admits. In particular, Kooijmans points out the opening tract of a lecture delivered at Columbia University in the mid-1920s entitled "Grotius and Geneva" makes this method explicit:[37]

> The following pages do not purpose to deal with Hugo Grotius and his book of 1625 'On the law of war and peace' in the light of the past. They purpose to deal with them in the light of the present. When a book of three centuries

[35] van Vollenhoven, "Grotius and the Study of Law", p.3.

[36] Johanna Oudendijk quoted in Kooijmans, p.85.

[37] Kooijmans, p.86.

> ago comes to the fore again in several countries, as by common consent, yet without any previous mutual understanding; when again it obtains a firm hold on the thoughts of mankind; and when, as was the case six years ago, [here van Vollenhoven was referring to a meeting of the Grotius Society in 1920] it is predicted that its influence 'may even grow' – it must carry some message for the world of to-day. It is this message which solicits our interest and out [sic] attention.[38]

Thus van Vollenhoven finds no fault in the wholesale and outwardly anachronistic supplanting of Grotius' ideas into the problems of the twentieth century. Significantly however, his doing so does not detract from the extent to which critical elements of Grotius' conceptualisation of morality, including *caritas* and *temperamenta*, feature in his work.

Morality in International Relations and International Law

The revival of Grotian scholarship and foundation of the 'Grotian tradition of international iaw' is also embedded in a range of questions surrounding the relationship between law and morality. In particular, the two long-standing questions, the first positivist in orientation and the second of a normative configuration remained unresolved; what *is* the relationship between law and morality; and, what *ought* to be the relationship between law and morality? These two questions were addressed or dismissed in the context of two scholarly 'debates', one in international legal scholarship and one in the corresponding field

[38] van Vollenhoven, "Grotius and Geneva", p.5, in Kooijmans, p.86 – comments in brackets his.

of international relations. Of course, as will be seen shortly, a great degree of overlap exists between the two debates and as such, both feature highly in Lauterpacht's formulation of the 'Grotian tradition' and other writings.

In international legal scholarship, as had been the case since the eighteenth century, views on the relationship between law and morality are polarised around the contending natural and positive legal traditions. As made apparent in the previous chapter, while natural law posits an embedded morality largely "independent of the practices of actual communities,"[39] in its most common forms, positive law promotes the general, although not absolute repudiation of morality from the field of law.[40] Although in recent scholarship, writers such as John Finnis and Neil MacCormick have demonstrated that positive and natural law need not be viewed as dichotomous opponents, during the time in question, the battle lines were more firmly drawn.[41] Thus, on the positivist side stand the writings of Hans Kelsen and H.L.A. Hart, each explicitly derived from the works of John Austin, while the natural law tradition is represented most prominently in the works of J.L. Brierly.

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[39] Terry Nardin, "Legal Positivism as a Theory of International Society", in *International Society: Diverse Ethical Perspectives,* ed. David R. Mapel and Terry Nardin, (Princeton: Princeton University Press, 1998), p.27.

[40] Frederick G. Whelan, "Legal Positivism and International Society", in *International Society: Diverse Ethical Perspectives,* ed. David R. Mapel and Terry Nardin, (Princeton: Princeton University Press, 1998), p.44.

[41] John Finnis, *Natural Law and Natural Rights,* (Oxford: Oxford University Press, 1980); John Finnis, "The Truth in Legal Positivism", in *The Autonomy of Law: Essays on Legal Positivism,* ed. Robert P. George, (Oxford: Oxford University Press, 1996); Neil MacCormick, "Natural Law and the Separation of Law and Morals" in *The Autonomy of Law;* Robert P. George, "Natural Law and International Order" in *International Society: Diverse Ethical Perspectives,* p.54.

Standing between opposing sides is Georg Schwarzenberger's 'Grotian' tradition which argues that a limited relationship between law and morality both *does* and *ought* to exist, thereby functioning as an intermediary between the two.[42]

In international relations scholarship, questions surrounding the relationship between law and morality have been conventionally framed in terms of a so-called 'debate' between realism and idealism known in disciplinary history as the 'first great debate'. As Peter Wilson notes however, "[b]oth 'realism' and 'idealism' are extremely elastic terms"[43] and as such, it makes little sense to discuss them in general. Thus, although they do not present identical points of view, on the 'idealist side' stand, most prominently, Lord Robert Cecil's *The Moral Basis of the League of Nations*, along with the writings of Gilbert Murray, David Davies, Arnold Toynbee, Alfred Zimmern and Norman Angell. What unites their disparate versions of 'idealist' thought is a fundamental belief in progress coupled with the claim that states have moral personalities and, by extension, moral rights and duties cognisant of those imposed upon individuals. On the 'realist side' stands Reinhold Niebuhr's *Moral Man and Immoral Society* which argues that only individuals have a moral capacity and E.H. Carr's more tempered approach to the limits of morality in international relations.

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[42] Georg Schwarzenberger, *Power Politics: An Introduction to the Study of International Relations and Post-War Planning*, (London: Jonathan Cape, 1941), p.154.

[43] Peter Wilson, "Introduction: *The Twenty Years' Crisis* and the Category of 'Idealism' in International Relations", in *Thinkers of the Twenty Years' Crisis: Inter-war Idealism Reassessed*, ed. David Long and Peter Wilson, (Oxford: Clarendon Press, 1995), p.6.

However, Peter Wilson also contends that "the first great debate never actually occurred" as, "in the sense of a cohesive, and certainly self-conscious, school of thought, an 'idealist' or 'utopian' paradigm never actually existed."[44] 'Idealism,' he argues, was actually;

> Carr's clever device for discrediting a whole range of things he happened to disagree with. It is a realist category of abuse.[45]

'Idealism' was, according to Wilson's analysis constructed by drawing together an "exceedingly broad" range of views and beliefs under a vague umbrella.[46] Nonetheless, a number of exchanges did take place between writers self-consciously or subsequently classified as 'realists' or 'idealists'. In particular, E.H. Carr's criticisms of Alfred Zimmern's works are explicitly addressed by Norman Angell in his review of *The Twenty Years' Crisis.* In this vein, and of particular relevance to the construction of the Grotian tradition of international law, Hersch Lauterpacht also explicitly discusses the ninth chapter of *The Twenty Years' Crisis* entitled "Morality in International Politics" in his unpublished work, "Professor Carr on International Morality." As David Davies once remarked, although there are certainly realists and idealists in existence, it is rare to "find a combination of

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[44] Peter Wilson, "The myth of the 'First Great Debate'", *Review of International Studies,* Vol.24, Special Issue, (December 1998) p.1; see also, Lucian M. Ashworth, *Creating International Studies: Angell, Mitrany and the Liberal Tradition,* (Aldershot: Ashgate, 1991), p.1; and, Duncan S.A. Bell, "Political Theory and the functions of intellectual history: a response to Emmanuel Navon", *Review of International Studies,* Vol.29, (2003), p.154.

[45] *ibid.*

[46] *ibid.*, p.9.

the two in one person, the man imbued with broad sympathies who is also able to grasp the means by which his plans may be realised."[47] As will be seen shortly, this combination is most commonly termed the 'Grotian tradition' and emerged, in part, out of the debates that surrounded the two opposing points of view.

Natural Law and Positive Law

As Frederick G. Whelan argues, in the field of political theory, Thomas Hobbes is credited with founding the doctrine of legal positivism.[48] Indeed, although he was followed shortly by the acknowledged founder of legal positivism in international law, Richard Zouche, Hobbes' definition of law as "*a command of that person (whether man or council) whose instruction is the reason for obedience,*"[49] continues to influence positivist legal theory. In particular, the most important figure in the development of legal positivism, John Austin, can be shown to have derived his understanding of 'law properly so called' from Hobbes' original definition.[50]

Entertaining a more inclusive notion of the positive law of nations than that offered by Austin's theory, Lassa Oppenheim defines law as "*a body of rules for human*

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[47] David Davies. *The Problem of the Twentieth Century: A Study in International Relationships,* (London: Ernest Benn, 1930), p.121-122.

[48] Whelan, p.36.

[49] Thomas Hobbes, *On the Citizen,* ed. & trans. Richard Tuck and Michael Silverthorne, (Cambridge: Cambridge University Press, 1998), XIV.1, p.154.

[50] John Austin, *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence,* (London: Weidenfeld and Nicholson, 1954).

conduct within which by common consent of this community shall be enforced by external power."[51] As such, three conditions are necessary for the existence of law; first, there must be a community; second, "a body of rules for human conduct within that community"; and third, there must "be a common consent of that community that these rules shall be enforced by external power."[52] By extension then, "the basis of the Law of Nations is the common consent of the member-States of the Family of Nations" and, as such, it has only two sources, *express* consent (treaties) and *tacit* consent (custom).[53] With this, Oppenheim introduces his distinctly positivist treatment of international law. However, discounting the positivism of those prior to him, he writes;

> From the seventies of the nineteenth century the influence of the downfall of the theory of the Law of Nature becomes visible in the treatises on the Law of Nations, and therefore real 'positivistic' treatises make their appearance. For the Positivism of Zouche, Bynkershoek, Martens, Klüber, Heffter, Phillimore, and Twiss was no real Positivism, since these authors recognised a natural Law of Nations, although they did not make much use of it. Real Positivism must entirely avoid a natural Law of Nations. We know nowadays that a Law of Nature does not exist. Just as the so-called natural philosophy had to give way to real natural science, so the Law of Nature had to give way to jurisprudence, or the philosophy of the positive law. Only a positive Law of Nations can be a branch of the science of law.[54]

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[51] Oppenheim, p.6.

[52] *ibid.*, p.7.

[53] *ibid.*, p.20.

[54] *ibid.*, p.115-116.

In accordance with his natural law focus, Hugo Grotius is granted a somewhat patronising treatment in Oppenheim's history of the law of nations. Oppenheim writes that "Grotius, as a child of his time, could not help starting from the Law of Nature, since his intention was to find such rules of a Law of Nations as were eternal, unchangeable, and independent of the special consent of the single States."[55]

However, following a more strictly conceived notion of positive law, the two "most prominent positivists" of the twentieth century, Hans Kelsen and H.L.A. Hart, reformulated Austin's doctrine in order to conceive "international law as genuine (though defective) law."[56] According to Kelsen's 'pure theory of law', understood to be 'pure' "because it seeks to preclude from the cognition of positive law all elements foreign thereto",[57] law is defined as "the specific technique of a coercive order."[58] Thus Kelsen omits two elements of Austin's understanding of law from his definition; the claim that a law is a 'command' and the requirement that the 'command' is made by a 'sovereign'. Austin's assertion, he writes, is "incorrect, since not every command issued by someone superior in power is of a binding nature."[59] Thus, by removing the need for commands made by sovereigns, Kelsen entertains the possibility of international law existing as law, rather than simply as

[55] *ibid.*, p.101.

[56] Whelan, p.37.

[57] Hans Kelsen, "The Pure Theory of Law and Analytical Justice", in *What is Justice? Justice, Law and Politics in the Mirror of Science,* (Berkeley: University of California Press, 1960), p.266.

[58] Hans Kelsen, *General Theory of Law and State,* trans. Anders Wedberg, (Cambridge, Ma.: Harvard University Press, 1946), p.20.

[59] *ibid.*, p.31.

positive international morality as in Austin's theory. However, in a self-help international system, international law is conceived as 'primitive law' to be interpreted in a similar manner to the "institution of blood revenge *(vendetta).*"[60]

The relationship between law and morality in Kelsen's theory is best understood in terms of his distinction between natural and positive law. The "idea of natural law", he writes, "is one of a natural order, it follows that its rules, directly as they flow from nature, God or reason, are as immediately evident as the rules of logic and thus require no force for their realization."[61] Positive law, on the other hand, is "essentially an order of coercion" and is associated with law in general, defined above.[62] Contrasting the two then, Kelsen writes that "[u]nlike the rules of natural law," the rules of positive law "are derived from the arbitrary will of human authority."[63] Positive law consequently has little concern for principles of morality. As Kelsen writes;

> The fundamental difference between law and morals is: law is a coercive order, that is, a normative order that attempts to bring about a certain behaviour by attaching to the opposite behaviour a socially organized coercive act; whereas morals is a social order without sanctions.[64]

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[60] *ibid.*, p.339.

[61] Hans Kelsen, "Natural Law and Legal Positivism", in *General Theory of Law and State,* p.392.

[62] *ibid.*

[63] *ibid.*

[64] Hans Kelsen, *Pure Theory of Law,* trans. Max Knight, (Berkeley: University of California Press, 1967), p.62. See also Hersch Lauterpacht, "Kelsen's Pure Science of Law".

Despite presenting a version of legal positivism that is, on the face of it, morally devoid, Kelsen and Hart do retain a minimal notion of morality within their understandings of positive law. In particular, Hart concedes that "the development of law, at all times and places, has in fact been profoundly influenced both by conventional morality and ideals of particular groups, and also by forms of enlightened moral criticism urged by individuals, whose moral horizon has transcended the morality currently accepted."[65] However, although a relationship between law and morality can be said to exist in this particular sense, it does not follow that laws *necessarily* "reproduce or satisfy certain demands of morality."[66]

By extension, legal positivists do not afford the concept of international society a great deal of attention, in some instances denying its very existence. As discussed in the previous chapter and as will be further elaborated in the following chapter, the modern concept of international society is derived, in part, from an understanding of international society and international law as mutually constitutive entities. As this specific notion of international society is founded on common moralities, customs and/or religious faith, it is necessarily at odds with positivist legal theory thus understood. As such, it is fair to conclude that the prominence of positive legal theory was, in an immediate sense, particularly detrimental to the development of the 'Grotian tradition'. Not only did it deny the natural law underpinnings of international law and severely restrict the relationship between law and morality,

[65] H.L.A. Hart. *The Concept of Law,* (Oxford: Clarendon Press, 1961), p.181.

[66] *ibid.*

but it paid little attention to the concept of international society and even less to the figure of Hugo Grotius.[67]

Contrary to the outwardly positivist stance of Kelsen and, before him, Lassa Oppenheim, J.L. Brierly sought the revival of natural law in international legal scholarship and with it, principles of natural morality that had appeared in Grotius' works. Indeed, as Hersch Lauterpacht writes, Brierly "had no hesitation in pointing to the beneficent potentialities of a revived law of nature as one of the main elements of the moral foundation of international law – for, on final analysis, he saw no other basis for it."[68] Although he published a number of articles, addressing a wide range of subjects pertinent to contemporary legal issues – for example, whether there was a need for an international criminal court[69] - it was his inaugural lecture as the Chichele Professor of International Law and Diplomacy at Oxford in 1924, "The Shortcomings of International Law,"[70] and a book entitled *The Law of Nations: An Introduction to the International Law of Peace,*[71] that have been most influential in subsequent scholarship.

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[67] Grotius is mentioned only once, in passing, in Kelsen's *General Theory of Law and State,* and is reduced to a reference in an endnote in Hart's *The Concept of Law,*

[68] Hersch Lauterpacht, "Brierly's Contribution to International Law", in *International Law Being the Collected Papers of Hersch Lauterpacht,* ed. E. Lauterpacht, Vol.2, (Cambridge: Cambridge University Press, 1975), p.431.

[69] J.L. Brierly, "Do We Need an International Criminal Court?", *British Yearbook of International Law,* Vol.8, (1927), pp.81-88.

[70] J.L. Brierly, "The Shortcomings of International Law", *British Yearbook of International Law,* Vol.5, (1924), pp.4-16.

[71] J.L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace,* (Oxford: Oxford University Press, 1942).

The central argument of Brierly's inaugural lecture contended that "international law lost the most faithful seed of development that it has ever had when, far too early for the health of the system, though doubtless inevitably, its foundation in natural law was undermined."[72] This 'shortcoming' Brierly attributes directly to the "triumph of the positive school."[73] In particular, he argues positivism undermines the efficacy of international law by bringing into question its ability to enforce its rules. Indeed, contrary to the definition of law supplied by the extreme positivist legal theory of writers such as Kelsen, international law was seen to lack the coercive element necessary for its inclusion within the bounds of positive law. This, despite the existence of the distinctly positivist elements of treaties and customary law within its bounds. However, Brierly counters this criticism by arguing that although "it is true that the rules of international law are not always observed...neither are those of municipal law."[74] With this, he concludes that "it seems doubtful whether it would be safe to affirm that actual breaches of international law are much more frequent than those of municipal law."[75] Nonetheless, enforcement is acknowledged as one of the central shortcomings of international law.

[72] Brierly, "Shortcomings", p.9.

[73] *ibid.*

[74] *ibid.*, p.5.

[75] *ibid.*

However, Brierly maintains that the most prominent shortcoming of international law is the doctrinal dominance of legal positivism. Of particular concern is the hard distinction made between law and morals in most legal positivist theory and the extent to which it was thought to have permeated international law. In light of this limitation, Brierly therefore ascribed to the law of nature as the basis of international law and, with it, a notion of ethics derived from its central precepts. He writes;

> We are too often tempted to forget the link between law and morals is much more fundamental than the difference between them and that the ultimate basis of the obligation to obey the law can only be a moral one. The problem of the binding nature of international law is only one aspect of the binding character of law in general, in the same way as the latter is no more than an aspect of the wider problem of obligation in general. And this is a problem of ethics.[76]

Drawing a connection between natural law and morality then, Brierly argues that "the law of nature stands for the existence of *purpose* in law, reminding us that law is not a meaningless set of arbitrary principles to be mechanically applied by courts, but that it exists for certain ends, though these ends may have to be differently formulated in different times and places."[77] These 'ends' are specifically directed towards the "sake of the individual in society", rather than "a non-existent collective conscience" and thus ought to incorporate those fundamental moral

[76] Brierly quoted in Lauterpacht, "Brierly's Contribution", p.434.

[77] Brierly, *The Law of Nations,* p.16.

precepts outlined by the law of nature.[78] By thus arguing, Brierly advocates a "return to the Grotian conception of the international community being not an association of *civitates*, but a community of *genus humanum.*"[79] Although it is not certain that Brierly used the term 'Grotian' himself, this perspective was widely understood to constitute a 'Grotian' conception of international society at the time. Nonetheless, Brierly was one of the last theorists to ascribe to the nineteenth century motto of *ubi societas ibi ius* in international legal scholarship.

Following this line of argument further, Brierly also argues against the idea that sovereigns are not subject to legal, and hence moral, obligations. He writes that "[t]he notion at the root of "sovereignty" is superiority, which may be an appropriate notion when the internal life of the State is under analysis, but to which it is difficult to give a meaning when we are examining the relations of State to State."[80] Twenty years on he writes;

> To say that the root of the evil is that states cling to their sovereignty and that therefore the line of progress is to take this sovereignty away of to reduce its range, does not carry the matter any further. That may be true: there is a sense in which it is certainly true, but all it does is to put a practical difficulty into a vague and abstract form which opens up endless opportunities for a warfare of words. Sovereignty is not a physical thing that a state can hand over in the way a solider hands in his kit when he is discharged; it is merely a word which has changed its meaning repeatedly in

[78] Lauterpacht, "Brierly's Contribution", p.435.

[79] *ibid.*, p.436.

[80] Brierly, "Shortcomings", p.12.

> the course of centuries of usage, and which to-day has different meanings in different contexts and in the mouths of different people.[81]

Thus, it is not sovereignty, as such, that is the limiting factor of international law, although is certainly plays a significant part, but the manner in which sovereignty and sovereigns are perceived. Indeed, recognising that the existence of sovereignty is a fact of the international system, Brierly is advocating a return to the natural law precept evident in Grotius' works that states, despite their sovereignty, are entities with moral responsibilities and obligations indicated by law. Thus he concludes that;

> To say that international law is a failure, if by a failure we mean that it has not succeeded in doing for states when they have asked of it, is a mistake. For on the contrary it does what they ask it to do reasonably well on the whole. The real trouble is that they have not asked very much of it.[82]

A particular remedy Brierly proposes for the limited scope of international law is the institution of a real distinction between lawful and unlawful war, a distinction he attributes directly to Grotius.[83] According to Brierly's reading, Grotius "saw clearly that international order is precarious unless that distinction can be established."[84] However, to its subsequent detriment, "this distinction never became

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[81] J.L. Brierly, "Vital Interests and the Law", *British Yearbook of International Law*, Vol.21, (1944), p.52.

[82] *ibid.*

[83] Brierly, *The Law of Nations*, p.26.

[84] *ibid.*

part of actual international law."[85] Indeed, "[i]t was not until the foundation of the League of Nations in 1919 that any real attempt was made...to embody in actual law the cardinal principle of Grotius's system."[86]

Finally, it is with Georg Schwarzenberger's chapter "The Functions of International Morality" in *Power Politics* that an explicit notion of 'Grotian morality' appears once more. Here Schwarzenberger seeks to address the question of whether or not moral influence can "permeate a society predominantly ruled by force."[87] His initial response supposes that if international law has a function in international society then "it is highly probable that morality is also not entirely alien from this sphere."[88] However, this brings him to a more serious problem: "in the relationship between the stars of international society, do there exist any rules identical or comparable with those moral norms applicable to the relations between individuals?"[89] Here, he writes, within the field of international law, three approaches exist to the normative part of this question – i.e. where *ought* morality lie in relation to international law. The first, 'positivist' approach "excludes international morality."[90] As Schwarzenberger writes, "even if there were conclusive evidence in the practice of States of the reception of morality into law," proponents of this perspective, "would

[85] *ibid.*

[86] *ibid.*

[87] Schwarzenberger, p.153.

[88] *ibid.*

[89] *ibid.*

[90] *ibid.*, p.154.

shrink from accepting morality as a *sine qua non* of international law."[91] "In diametrical contrast", he writes, "a naturalist would either pin his faith to the superiority of natural over positive law or else equate them."[92] Finally, standing between these two approaches is, predictably, the 'Grotian tradition', "the golden mean between these two extremes."[93] Proponents of what Schwarzenberger calls the Grotian 'school' "examine customary law, treaties and the general principles of law as recognized by all civilized States and would search in the practice of States for traces of an infiltration of morality into the system of international law and, accordingly, would either exclude or apply conceptions of international morality."[94] As will be seen shortly, this notion of 'Grotian morality' appears in a slightly altered form in Lauterpacht's 'Grotian Tradition of International Law'.

At the same time in International Relations scholarship questions of law and morality were being played out in the context of a debate between realism and idealism. As will be seen however, although realism and legal positivism, and idealism and natural law are not absolutely synonymous, a number of points of contact can be identified between each pair.

[91] *ibid.*

[92] *ibid.*

[93] *ibid.*

[94] *ibid.*

The 'Idealists'

Idealism is, as Peter Wilson notes, a multifariously conceived term. It is often, although not always, used interchangeably with 'utopianism', as preferred by E.H. Carr or, less accurately, with liberalism.[95] Although a number of common concerns unite those writers subsequently classified as 'idealists' the parameters of idealism/utopianism were most explicitly defined by E.H. Carr in his attempt to discredit this pattern of thought. During the period with which Carr is concerned, President Woodrow Wilson emerged as "the world's most influential statesman," his arguments dominating the "new discipline of International Relations."[96] Sharing Bentham's faith in the liberal principles of "human reason, individual liberty, public opinion and social openness,"[97] Wilson and his fellow 'idealists' pursued peace and democracy, supposing conflict is not an inevitable feature of the international system, nor is it an inherent aspect of human nature. Highlighting these principles in his address to Congress asking for a declaration of war in April 1917, Wilson had argued:

> Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a

[95] Wilson. "Introduction", p.3-4.

[96] Knutsen, Torbjørn. *A history of International Relations theory,* 2nd ed. (Manchester: Manchester University Press, 1997), p.214.

[97] *ibid.*

> concert of purpose and of action as will henceforth ensure the observance of those principles.[98]

More famously however, on 18 January 1918 Wilson set out his 'Fourteen Points' which proposed the establishment of the League of Nations;

> A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.[99]

In addition to the formation of the ultimately unsuccessful League of Nations, after a significant amount of negotiation, Wilson's ideas presented in the Fourteen Points were substantively included in the Versailles Peace Treaty that formally brought the First World War to an end. Upon this beginning, a range of other theorists further developed the fundamental 'idealist' principles that Wilson had proposed.

Foremost amongst those idealists involved in the foundation and establishment of the League of Nations was Lord Robert Cecil (1864-1958). Indeed, Cecil is famed for what became known as the 'Cecil Draft', a document outlining the proposals of the Phillimore Committee appointed by Prime Minister Lloyd George, pertaining to the proposed structure and function of the League of Nations. As Paul Rich notes,

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[98] Woodrow Wilson, "The World Must Be Made Safe for Democracy: The Fourteen Points", From Address to Congress Asking for Declaration of War, April 2, 1917, in *Classics of International Relations*, 3rd edition, ed. John A. Vasquez (Upper Saddle River: Prentice Hall, 1996), p.36.

[99] A.C. Wolworth in Knutsen, p.206.

not only was the Cecil Draft "taken to Paris and shown to Woodrow Wilson's legal adviser David Hunter Miller along with General Jan Smuts' 1918 pamphlet *The League of Nations: A Practical Suggestion,"* but it went considerable way towards countering "Woodrow Wilson's more ambitious [and impractical] ideas."[100] In 1923, Cecil also published the manuscript of his Essex Hall lectures of 1923 entitled *The Moral Basis of the League of Nations,* and in 1937 was awarded the Nobel Peace Prize.

Predictably, the central argument of Cecil's work maintained that "the League of Nations must have a moral basis."[101] This, he reasoned, was due to the fact that the League stood for "peace as opposed to war, [and] for cooperation between nations as opposed to hostility," concluding that "it does not seem possible for anyone, however prejudiced he may be, to doubt that there is a moral basis for such a movement as that."[102] Although he doesn't go into a great deal of detail as to precisely what this moral basis entails, his refutation of the range of criticisms leveled at the supposed 'moral basis of the league of nations' make it clear that he is specifically talking about Christian morality.[103] Indeed, the most concrete statement it is possible to locate in Cecil's work is that which maintains that "the State is an

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[100] Paul Rich, "Alfred Zimmern's Cautious Idealism: The League of Nations, International Education and the Commonwealth", in *Thinkers of the Twenty Years' Crisis,* p.84.

[101] Lord Robert Cecil, *The Moral Basis of the League of Nations,* The Essex Hall Lecture, 1923, (London: The Lindsay Press, 1923), p.7.

[102] *ibid.,* p.7-8.

[103] *ibid.,* p.10.

individual, a moral individual, and is subject as such to moral law"[104] and that moral principles include "the pursuit of justice, honour, generosity, and mercy."[105] Although Gilbert Murray is slightly more forthcoming, focusing on love as a central "characteristic of the struggle for life,"[106] it is in the writings of Alfred Zimmern that the most clearly argued presentation of the relationship between law and morality in idealist thought is found.

In 1930, "with the strong support of Gilbert Murray", Alfred Zimmern was "appointed Montague Burton Professor of International Relations at Oxford."[107] Prior to his appointment he held the position of deputy director of the League of Nations International Committee for Intellectual Cooperation and had contributed to the proposals of the Cecil Draft. In 1945 he became the first secretary-general of UNESCO. Although he published a number of significant works during his career, Zimmern's most famous work, *The League of Nations and the Rule of Law 1918-1935* was published in 1936 and has been subsequently heralded the "most polished work of the 'idealist' writers."[108] As Paul Rich points out however, Zimmern's was

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[104] *ibid.*, p.12.

[105] *ibid.*, p.15.

[106] Gilbert Murray, "Peace and Strife as Elements in Life: The Ideal of "Unhindered Activity"", in *The Ordeal of this Generation: The War, the League and the Future,* (London: George Allen & Unwin, 1929), p.18.

[107] Rich, p.80.

[108] Alfred E. Zimmern, *The League of Nations and the Rule of Law 1918-1935,* (London: Macmillan, 1936); Hedley Bull, "The Theory of International Politics, 1919-1969", in *International Theory: Critical Investigations,* (Houndsmill: Macmillan, 1995), p.186.

a 'cautious idealism' steeped in criticism of liberal institutionalist naivety.[109] In particular, Zimmern was especially critical of J.A. Hobson's support for world government. He writes;

> What Mr. Hobson really desires is a World-Government, and I wish he had said so. Probably he did not do so because he thought the title sounded too chimerical. But in reality there is nothing inconceivable or intrinsically impossible in the establishment of a world-government. The real difficulty is to establish free world-government – to ensure universal peace without the sacrifice of liberty.[110]

As Hobson's ideal of world government does not take into consideration the possible loss of liberty it would entail, Zimmern concludes that it "and all other similar schemes fall to the ground."[111] Published in 1922, his less well known work *Europe in Convalescence* "anticipated some of the arguments of *The Twenty Years' Crisis* by stressing how the 'internationalist doctrines of liberalism' had been remoralized by 'small, semi-religious coteries' in Britain and the United States after a long period between 1871 and 1914 when they had been driven from the mainstream of European thought."[112]

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[109] Rich, p.82-3.

[110] Alfred E. Zimmern, "Nationality and Government", in *Nationality and Government with other War-Time Essays,* (London: Chatto & Windus, 1918), p.39.

[111] *ibid.*, p.40.

[112] Rich, p.83.

In accordance with his criticisms of Hobson's work, Zimmern's liberalism is based on "two fundamental articles of faith";

> The first is that right and wrong apply to public affairs. The second is that Justice and Liberty are the chief political goods, and Injustice and Servitude the chief political evils.[113]

As will be seen, these two articles of faith permeate Zimmern's subsequent writings. As D.J. Markwell notes, four ideas are central to Zimmern's 'idealist' thought. First is a belief in progress, and in particular the idea that education is an essential tool in the quest for peace.[114] Indeed, the primacy of education was particularly apparent in Zimmern's inaugural lecture as the Montague Burton Professor at Oxford:

> We find ourselves, through no fault of our own, in a world in which the barbarians, in the shape of the international economic forces which mould our existence, have assumed the mantle and have become accustomed to exercising it...Our choice is between attempting to civilize the barbarians and abandoning our own city. It is between cooperation and exile from the world's life: between internationalism and monasticism: between an effort at Hellenization, by whatever means may be at hand, or acquiescence in catastrophe and a return to the Dark Ages.[115]

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[113] Zimmern, *Nationaliy and Government,* p.xvi.

[114] D.J. Markwell, "Sir Alfred Zimmern revisited: fifty years on", *Review of International Studies,* Vol.12, (1986), p.284.

[115] Zimmern quoted in Rich, p.86-7.

As will be seen shortly however, the failure of Zimmern's 'education project' to explain the failure of collective security following the beginning of the dissolution of the League of Nations was particularly set upon by E.H. Carr.

Secondly, contrary to the conventional realist position, Zimmern maintained that war was not an inherent feature of the international system but rather that a "latent harmony of interests" could be identified as existing between states.[116] On this basis, and that of his third central idea, Zimmern posits the existence of an international society. Thus, third is "an understanding of the rule of law and its dependence on international society."[117] In particular, referring to the works of Gilbert Murray, Zimmern argues that the prevention of war required, in part, the extension of international law. He writes;

> One road lies through the development of what is known as International, but should more properly be called *Inter-State Law*, through the revival of a former and broader foundation of the Concert of Europe conceived by the Congress of Vienna just a hundred years ago – itself a revival, on a secular basis, of the great medieval ideal of international Christendom, held together by Christian Law and Christian ideals. That ideal faded away for ever at the Reformation, which grouped Europe into independent sovereign States ruled

[116] Markwell, p.284.

[117] *ibid.*

by men responsible to no one outside their own borders. It will never be revived on an ecclesiastical basis.[118]

Thus, the final element of Zimmern's thought is a notion of international society, incorporating inter-state law and taking the form of a 'Commonwealth of Nations'. It is here that a sense of the relationship between law and morality in his thinking is most apparent. Characterising the central features of a Commonwealth, Zimmern writes;

> A Commonwealth is an organisation designed with the ruling motive of love and brotherhood. It seeks to embody, not only in phraseology and constitutional doctrine, but in the actual conduct of public affairs, so far as the frailty and imperfection of a man admit, the spirit and ideals of religion.[119]

Thus, although a new concert of Europe or commonwealth of nations would necessarily be founded on secular principles it would, nonetheless, retain an ecclesiastically derived moral sense:

> That problem is incapable of solution till men have come to regard States as moral personalities with duties as well as rights: till all the leading States, through the public opinion of their free citizens, have come to regard their duty to humanity as prior to the safe-guarding of their selfish purposes: and

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[118] Alfred E. Zimmern, "German Culture and the British Commonwealth" from "The War and Democracy" (published December 1914), in *Nationality and Government*, p.23.

[119] Alfred E. Zimmern, "Three Doctrines in Conflict", in *Nationality and Government*, p.356.

> until there is a far closer agreement among the civilized peoples than seem possible to-day as to the principles which should underlie the ultimate organisation of the world on the basis of morality and justice.[120]

Thus, the 'moral sense' of Zimmern's understanding derives its central principles from the law of nature.

However, when Reinhold Niebuhr accused the idealists of occasioning "considerable moral and political confusion"[121] he was not far from the truth. Although a number of specific principles emerge from the fog of idealist thought with some degree of clarity, for example those maintaining that states have moral personalities, and that international society and international law exist together in an intrinsic relationship to one another, precisely what this morality they purport to apply to states entails remains both vague and imprecise. Thus, although the term 'morality' is bandied about as if to suggest that its meaning is fixed and devoid of all contention, it can only be understood by gleaning a hazy sense of what it might entail from a range of disparate works.

Although many writers categorised as 'idealists' are also simultaneously understood to be 'Grotians', the figure of Hugo Grotius and indeed, the term 'Grotian' itself, appears relatively infrequently in the idealist works mentioned above. What is

[120] Zimmern, "Nationality and Government", p.60.

[121] Reinhold Niebuhr quoted in Knutsen, p.216.

more, when Grotius' works are mentioned, they are very often accompanied by downright bizarre interpretations, for example, David Davies' absurd claim that "Grotius had little or no idea of the natural law of States."[122] Rather, for Davies, the term 'Grotian' indicates the acknowledgement of a relationship between municipal and international law whilst for Schwarzenberger, introduced above, it is a distinctly moral determination. As such, it appears that just as no one single understanding of what the term 'idealism' entails, no single notion of the 'Grotian' can be discerned within its porous bounds.

The Realist Challenge

Although the work of the radical American theologian Reinhold Neibuhr, *Moral Man and Immoral Society,* published in 1932,[123] is widely characterised as the first sustained critique of 'idealist' thought, in British international relations scholarship it was with E.H. Carr's *The Twenty Years' Crisis* that 'idealist' thought ran into serious intellectual trouble. A former diplomat and Foreign Officer adviser, Carr was appointed to the Woodrow Wilson Chair of International Relations at the University of Wales, Aberystwyth in 1936. His appointment was much to the chagrin of the founder of the Wilson Chair, David Davies, a committed idealist who had expected the holder of the position "to lay down such rules and suggest such measures as may tend to diminish the evils of war and finally to extinguish war between nations."[124] Carr certainly did not fit his 'ideal' profile and, as Tim Dunne

[122] Davies. p.162.

[123] Reinhold Niebuhr, *Moral Man and Immoral Society,* (New York: Scribner's Sons, 1932).

[124] Ronald Roxburgh, "Preface" in Oppenheim, *International Law,* p.v.

writes, represented the 'final nail' in Davies' idealist coffin.[125] Indeed, Carr's inaugural lecture, "Public Opinion as a Safeguard of Peace", delivered on October 14, 1936, certainly raised Davies' ire, along with that of his compatriot Gilbert Murray and the international legal scholar, Hersch Lauterpacht. In particular, Carr had argued specifically against Davies' proposal for the establishment of an international police force to prevent the escalation of conflicts at their outset that formed the substantive argument of his 1930 text *The Problem of the Twentieth Century*:[126]

> I do not believe [said Carr] the time is ripe...for the establishment of a super-national force to maintain order in the international community; and I believe that any scheme by which nations should bind themselves to go to war with other nations for the preservation of peace is not only impracticable, but retrograde.[127]

In response to this, and Carr's apparent insufficient commitment to the demands of the Chair, Davies wrote some time later;

> I wish to God I had never initiated this proposal. Almost since the inception of this department it has worked consistently against the programme I have spent most of my time and money advocating; namely, the development of the League with a real international authority. All the professors from

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[125] Tim Dunne, *Inventing International Society: A History of the English School*, (London: Macmillan, 1998), p.25.

[126] Davies, *The Problem of the Twentieth Century.*

[127] E.H. Carr quoted in Brian Porter, "David Davies and the Enforcement of Peace", in *Thinkers of the Twenty Years' Crisis*, p.69.

> Zimmern onwards opposed these ideas, with the result that we have been landed in another...war.[128]

Despite Davies' protestations, Carr went on to become perhaps the most influential figure in British international relations theory of the twentieth century.

With Carr, the 'idealism' of theorists such as Zimmern, Angell and Davies became 'utopianism' although, as Peter Wilson points out, it was more accurately a "realist category of abuse"[129] used to vilify "practically everyone who disagree[d]" with him.[130] As Lauterpacht argues in a paper delivered at the Carlyle Club in 1953, "On Realism, Especially in International Relations", the use of the terms 'realism' and 'utopianism' were value-laden from the outset. Realism, he argues, "is an assertion of victory even before the argument has started. It is an attempt to reduce the opponent at the very outset, to a lower intellectual status and to gain the confidence of others."[131] Indeed, as Carr writes;

> The antithesis of utopia and reality can in some aspects be identified with the antithesis of Free Will and Determinism. The utopian is necessarily voluntarist: he believes in the possibility of more or less radically rejecting reality, and substituting his utopia for it by an act of will. The realist

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[128] David Davies quoted in Porter, *ibid.*, p.70.

[129] Peter Wilson, "The myth of the 'First Great Debate'", *Review of International Studies,* Vol.24, Special Issue, (December 1998) p.1.

[130] Lauterpacht, "Professor Carr on International Morality", p.68.

[131] Lauterpacht, "On Realism", p.53.

analyses a predetermined course of development which he is powerless to change.[132]

With this, Carr's realist theory of international relations was developed as an inevitable process to which human society is subject. Drawing heavily on Mannheim's 'sociology of knowledge'[133] and Marxist notions of interests and social relations,[134] Carr argues that contrary to the assumptions of idealism, conflict over interests is inevitable in international society. More specifically, he argues that one of the central characteristics of the world is the scarcity of those things necessary for life, and in particular a good life. Conflict is inevitable as the stronger 'haves', in order to maintain their status and possession of these goods in an anarchical international system, impose 'ethical' laws and rules upon the weaker 'have-nots', who ignore these rules as they try to improve their situation. [135] As such, the inevitability of conflict was contrasted with the 'utopian' vision of harmony in the international sphere, instigating what came to be known as the 'first great debate'.

Carr's specific criticisms of the idealist vision of morality in international relations begins with the observation that writers such as Zimmern, Angell and Toynbee concentrated their interests "on the question of what morality ought ideally to be"

[132] Carr, p.12.

[133] see *ibid.*, p.15, 65.

[134] see *ibid.*, p.62-67.

[135] *ibid.*, p.42.

rather than on the actual "moral behaviour of states except to pass hasty and sweeping condemnation on it in the light of this ideal morality."[136] Actual "international morality", he argues, is not a 'lofty ideal' of desirable behaviour but actually "*is* the morality of states."[137] However, the affirmed existence of the 'morality of states' does not infer that states have moral rights and duties cognisant of those of individuals.[138] The fundamental reason Carr gives for this point of disjuncture is that states are not capable of displaying "love, hate, jealousy and other intimate emotions which play a large part in individual morality."[139] However, as hinted at above, Carr does not dismiss the existence of international morality altogether.

According to Carr's realist/utopian division of international thought, "[t]heories of international morality tend to fall into two categories."[140] On the one hand are the realists who "hold that relations between states are governed solely by power and that morality plays no part in them", whilst on the other are the 'utopians' who maintain that "the same code of morality is applicable to individuals and to states."[141] By conceding the existence of some form of international morality that does not align the moral rights and duties of individuals and states, Carr stands somewhere between these two extremes. Thus, he argues that "the morality of the

[136] Carr, p.135.

[137] Carr, p.138.

[138] *ibid.*, p.139.

[139] *ibid.*, p.143.

[140] *ibid.*, p.140.

[141] *ibid.*

state must be confined to that formal kind of morality which can be codified in a set of rules and approximates to law, and that it cannot include such essentially personal qualities as altruism, generosity and compassion, whose obligations can never be precisely and rigidly defined."[142] As a result, morality comes to be defined in terms of the "good of the state."[143] Thus, "[h]armony in the international order is achieved by [a] blend of morality and power" in which "the role of power is greater and morality less."[144]

This, along with a range of other aspects of Carr's work inspired very strong reactions, particularly from those whom he had singled out for criticism. For example, Norman Angell, "was particularly disturbed by Carr's apparent 'moral nihilism' which led to a policy of 'donothingism and over-caution'."[145] Furthermore, although Zimmern agreed with some of Carr's more stringent criticisms of the naïve utopianism of figures such as Woodrow Wilson, he argued that the teaching of international relations "had to be done from some ethical standpoint and this could not be done 'by running away from the notion of good because it is liable to misuse by the ignorant, the muddle-headed and the ill-intentioned or by refusing to admit that one foreign policy of one nation or one political cause can be "better" than another."[146] However, of greatest relevance to

[142] *ibid.*, p.143.

[143] *ibid.*, p.145-6.

[144] *ibid.*, p.150, 151.

[145] Rich, p.88.

[146] Zimmern quoted in Rich, *ibid.*

the development of the Grotian tradition were those criticisms expressed by Hersch Lauterpacht.

Lauterpacht's critique constitutes a two-pronged attack on the subject of realism in general and, in particular, what he views as Carr's morally deficient version of it. He doesn't mince words with either, writing that;

> ...realism is an inducement to facile and complacent thinking; that, as a method of argument and discussion it may often be, in effect, open to the charge of being intellectually dishonest; that it is a convenient and much abused cloak for opportunism or worse; and that it has tended to treat with contempt long-range principle as a standard of human action and to deny the value of human will as an agency shaping the destiny of men.[147]

In particular, Lauterpacht was especially concerned with both the extent to which realists magnify the apparent immorality of states and the "double standard of morality" they proposed to apply to states and individuals.[148] On the first of these issues, he writes that there "has been an almost fatalistic tendency to assume that modern States do habitually act in a manner offending against the generally accepted conceptions of morality."[149] However, Lauterpacht questions the extent to which states actually act in contravention of conventionally accepted principles of morality, adding that although war certainly represents "an imperfection of international law and of international organization", it does not indicate an

[147] Lauterpacht, "On Realism", p.53.

[148] *ibid.*, p.60; Lauterpacht, "Professor Carr", p.72.

[149] Lauterpacht, "Professor Carr", p.72.

imperfection of international morality.[150] On the second of these issues, the relationship between state and individual morality, Lauterpacht argues that realists cannot conceive of a level of synonymy here because they are blinkered by a vision of the state as an immoral entity. Thus he writes that while Carr is right to point out that the "personification of the State is one of the central aspects of the problem of international morality", he not correct "in assuming that the problem *began* with the personification of the State."[151] Indeed, by denying that "the same standards are applicable to the morality of States and individuals....Professor Carr's general thesis – although adroitly dissociated from that of the 'realist' – amounts in fact to a denial of international morality" in its claim that international morality can be simply equated with the good of the state.[152] As will be seen shortly, it was with these issues in mind that Lauterpacht set about constructing the Grotian tradition of international law.

Hersch Lauterpacht's 'Grotian Tradition'

Although Hersch Lauterpacht is not conventionally considered a major figure in the history of International Relations, his influence upon its subsequent development, particularly in British scholarship, is significant. Not only did he address the central precepts of realist thought and engage E.H. Carr's variant of it, but he was an active member of the League of Nations Union, a member of the British War Crimes

[150] *ibid.*, p.72-3.

[151] *ibid.*, p.68.

[152] *ibid.*, p.77-78.

Executive, in which capacity he attended the Nuremberg Trials and, of course, the mastermind of the 'Grotian tradition of international law'. An orthodox Jew, fluent from a young age in Yiddish and Hebrew, Lauterpacht was born in 1897 in Lwów, then part of the Austro-Hungarian Empire. He completed his first doctoral dissertation on "The Mandate Under International Law"[153] under the supervision of Hans Kelsen at the University of Vienna who, noting his "extraordinary intellectual capacity,"[154] wrote that Lauterpacht was one of his best students. In 1923 Lauterpacht moved to London where he re-enrolled as a doctoral student at the London School of Economics and produced his second thesis, "Private Law Sources and Analogies of International Law" under the guidance of his mentor, and later friend, Arnold McNair. As it is famously told, for much of his academic life, Lauterpacht adorned the wall of his study with three pictures, a photo each of Kelsen and McNair, and an engraving of Hugo Grotius. Indeed, as will be seen, although Lauterpacht disagreed with Kelsen's dismissal of natural law from the central precepts of international law, he "was impressed by the constructivist imagination at play in the Pure Theory of Law."[155] His first published article was an assessment of the contribution of John Westlake to the development of International Law entitled "Westlake and Modern Day International Law"[156] that sought to

[153] Unfortunately the only copy of Lauterpacht's thesis was kept in the archives of the University of Vienna which was bombed during the Second World War. As Lauterpacht did not keep a copy himself it was lost forever.

[154] Hans Kelsen and Lord McNair, "Tributes to Sir Hersch Lauterpacht", *European Journal of International Law*, Vol.8, No.2, (1997), p.309.

[155] Koskenniemi, p.356.

[156] This article was first published in *Economica*, Vol.5, (1925), pp.307-325 but also appears in *Collected Papers*, Vol.2, pp.385-403.

demonstrate, by reference to Westlake's treatise that absolute adherence to one or the other of the leading legal doctrines of the time, natural law and positivism, was not necessary. Rather, international law ought to be viewed as incorporating aspects of both legal traditions.

Shortly after the completion of his dissertation, Lauterpacht was employed as a lecturer at the London School of Economics before being appointed Reader in Public International Law at the University of London in 1932. In 1936 he was called to the Bar at Gray's Inn and in 1938 became the Whewell Professor of International Law at Cambridge. Tragically, Lauterpacht's entire family was killed in the early stages of the Holocaust and, as Koskenniemi suggests, this pivotal event in his life may well have inspired the shift towards human rights in his later works.[157] During his lifetime he published five major works in international law; *Private Sources and Analogies of International Law (with Special Reference to International Arbitration)* (1927), *The Function of Law in the International Community* (1933), *Recognition in International Law* (1947), *International Law and Human Rights* (1950) and *The Development of International Law by the International Court* (1958). Lauterpacht also served as the editor of the *British Yearbook of International Law* and edited four editions of *Oppenheim's*

[157] Koskenniemi, p.388.

International Law.[158] An edited collection of his own papers was published in four volumes by his son Elihu Lauterpacht in the 1970s.[159]

Lauterpacht defines international law as follows:

> International Law is the body of rules of conduct, enforceable by external sanction which confer rights and impose obligations primarily, although not exclusively, upon sovereign States and which owe their validity both to the consent of States as expressed in custom and treaties and to the fact of the existence of an international community of States and individuals. In that sense international law may be defined, more briefly (though perhaps less usefully), as the law of the international community.[160]

Thus, Lauterpacht ascribes to the notion that international law is an element of international society. Refuting those who doubt the existence of an international community or international society, he argues in an unpublished paper that "reality shows a picture of the modern world as one of common solidarity and community

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[158] For an outline of what is contained in these works see Wilfred Jenks, "Hersch Lauterpacht – The Scholar as Prophet", *British Yearbook of International Law,* Vol.26, (1960), pp.1-103.

[159] For more biographical accounts of Lauterpacht see the *European Journal of International Law,* Vol.8, No.2, (1997) which dedicated a section to him and includes the following articles; Ian Scobbie, "The Theorist as Judge: Hersch Lauterpacht's Concept of the International Judicial Function", pp.264-298; Chaim Herzog, "Sir Hersch Lauterpacht: An Appraisal", pp.299-300; Robert Jennings, "Hersch Lauterpacht: A Personal Recollection", pp.301-304; Stephen M. Schwebel, "Hersch Lauterpacht: Fragments for a Portrait", pp.305-308; as well as the tributes of Kelsen and McNair mentioned above and a version the chapter of Martti Koskenniemi's *The Gentle Civilizer of Nations* dealing with the life and works of Hersch Lauterpacht.

[160] Hersch Lauterpacht, "The Definition and Nature of International Law and its Place in Jurisprudence", in *Collected Papers,* Vol.1, p.9.

of interests in the field of economic endeavour and of scientific pursuit of humanitarian assistance – a unity transcending the borders of the sovereign State in a manner which has led many to believe that the exclusive and self-sufficing sovereign State is a challenge to a higher and ever present reality, and that interdependence and not independence is the primary and fundamental fact with which we are inescapably confronted."[161] More publicly however, he presents a similar argument in a Royal Institute of International Affairs paper that;

> This essential and manifold solidarity, coupled with the necessity of securing the rule of law and the elimination of war, constitutes a harmony of interest which has a basis more real and tangible than the illusions of the sentimentalist or the hypocrisy of those satisfied with the existing *status quo.*[162]

For Lauterpacht, this solidarity was expressed in the Covenant of the League of Nations, the "fundamental charter of the international society."[163] However, with its failure to fulfil its "principal objective" of collective security following the Japanese invasion of Manchuria and Italy's incursions in Abyssinia, Lauterpacht's vision of the structure of international law was in serious trouble.[164] Indeed, in what

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[161] Hersch Lauterpacht, "Sovereignty and Federation in International Law", in *International Law Being the Collected Papers of Hersch Lauterpacht,* ed. E. Lauterpacht, Vol.3, (Cambridge: Cambridge University Press, 1975), p.6.

[162] Hersch Lauterpacht, "The Reality of the Law of Nations", in *International Law Being the Collected Papers of Hersch Lauterpacht,* ed. E. Lauterpacht, Vol.2, (Cambridge: Cambridge University Press, 1975), p.25.

[163] Hersch Lauterpacht, "Japan and the Covenant", p.175.

[164] Koskenniemi, p.353.

Koskenniemi quite rightly calls an "uncharacteristic jump into informality and engagement", Lauterpacht revealed his anxiety to his colleagues at the Royal Institute of International Affairs with the following stream of questions:[165]

> But what have we to do in the meantime? Ought we to abandon the League and start afresh as soon as the obstacles disappear? Ought we to maintain it and to adapt it to the needs of a retrogressive period? Ought we to pursue the ideal of universality by reforming the League so as to make it acceptable for everyone? Ought we to admit that if peace cannot be achieved by collective effort, there are other good things that can be achieved through it?[166]

It appears that with this in mind, Lauterpacht dedicated much of his subsequent writing to establishing the theoretical basis for a more resolute basis for the regulation of conflict by the instrument of international law within international society.

As Koskenneimi notes, it was to the nineteenth century and, in particular, the works of John Westlake, that Lauterpacht turned in this endeavour.[167] As mentioned above, Lauterpacht had long held that Westlake's dual vision of international law could provide, not only a more stable basis for its functioning in the twentieth century but could also facilitate the resuscitation of the liberal rationalism that had marked such late nineteenth century legal scholarship. In this vein, Lauterpacht's

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[165] *ibid.*, p.353-354.

[166] Hersch Lauterpacht, "The League of Nations", in *International Law Being the Collected Papers of Hersch Lauterpacht,* ed. E. Lauterpacht, Vol.3, (Cambridge: Cambridge University Press, 1975), p.583.

[167] Koskenniemi, p.355.

project required not only the continued refutation of legal positivist principles and its sceptical appraisal of the reality and efficacy of international law, but a critical assessment of the applicability of liberal ideals, derived from the law of nature, to modern international law. On the first of these challenges Lauterpacht was able to draw on a long history of writing against the fundamental tenets of legal positivism. Indeed, as mentioned earlier, despite displaying both affection and almost overwhelming respect for his mentor Hans Kelsen, Lauterpacht did not adhere to the principles of the *Pure Theory of Law*. Rather, his early works, *Private Law Sources and Analogies of International Law* and *The Function of Law in the International Community* argue that international law is no less a system of law than civil law. In doing so, he argues against the treatment of "fundamental questions of international law apart from the corresponding phenomena in other fields of law" that mark the legal positivist approach.[168] With this, Kelsen and Hart's arguments that international law is a 'primitive' form of law are refuted.[169] What is more, Lauterpacht also attacks positivism in more substantive terms, arguing that it fails to adhere to the universal principles of science, namely, "logical consistency and correspondence with facts."[170] In particular, he questioned the positivist claim that states are the sole source of international law by arguing that the mere existence of law instituted by states is fundamentally based on the principle of *pacta sunt servanda,* a norm not explicitly derived from the will of states.[171] By doing so, as

[168] Hersch Lauterpacht, *The Function of Law in the International Community,* (Oxford: Clarendon Press, 1933), p.248.

[169] Kelsen, *General Theory,* p.103.

[170] Koskennneimi, p.364; *Function of Law,* pp.416-420.

[171] *ibid.*

Koskenniemi writes, Lauterpacht attacks "positivism on its own terrain of scientific factuality without having to resort to the moralizing rhetoric of naturalism or the formalism of the pure theory of law."[172] However, as will be seen shortly, although he conceived a fundamental place for it in international law he was not strictly a proponent of natural law either. Rather, he viewed himself as a "progressive" and promulgated limited range of liberal ideals.

The Grotian Tradition

'The Grotian Tradition in International Law' was published in 1946 following the tercentenary of Grotius' death in 1945. As Elihu Lauterpacht writes, his father considered this article "probably the most important that he ever wrote."[173] Indeed, this article represents the culmination of his thinking to date and has certainly exerted the greatest influence on the subject of international relations. Lauterpacht's motivations in composing this piece are made clear at the outset. In particular, he thinks it significant that, unlike the manner in which the tercentenary of publication of *De Jure Belli ac Pacis* was celebrated in 1925, the three hundredth anniversary of his death had "passed almost unnoticed" in 1945.[174] As Lauterpacht had made clear in a paper delivered to the Royal Institute of International Affairs at Chatham House five years earlier, he considered the "decade preceding the Second World War as one of a period of retrogression."[175] However, even with the peace of 1945,

[172] *ibid.*, p.365.

[173] Elihu Lauterpacht, editor's note to "The Grotian Tradition", p.307.

[174] Hersch Lauterpacht, *ibid.*

[175] Hersch Lauterpacht, "The Reality of the Law of Nations", p.25.

this retrogression had not been satisfactorily addressed as international law remained "unable to impose its authority over the essentials of the new international system."[176] Lauterpacht sought to contribute to the solution of this problem by proposing the solidification of international law via the reformulation of the 'Grotian tradition'.

Two distinct, yet inter-related variants of the 'Grotian tradition' are evident in Lauterpacht's work and, although he does not include a discussion of the concept of 'tradition' itself within their explication, a number of related ideas can be discerned from his other works. In a general sense, he implores his undergraduate students to "distrust labels" highlighting the manner in which titles attached to particular persons and sets of ideas bring with them an expectation of content.[177] The second 'clue' as to Lauterpacht's understanding of tradition is found in his characterisation of the natural law tradition of which he writes; "[o]f course, it is not the old law of nature; it is rather the modern 'natural law with changing contents', 'the sense of right', 'the social solidarity', the 'engineering' law in terms of promoting the ends of the international society."[178] That Lauterpacht seems to equate natural law directly with tradition, understanding it to be *the* traditional approach to the subject of international law, would seem to indicate that his vision of 'tradition' is a

[176] Lauterpacht, "Grotian Tradition", p.307.

[177] Lauterpacht, "On Realism", p.65.

[178] Hersch Lauterpacht, "Westlake and Present Day International Law", in *International Law Being the Collected Papers of Hersch Lauterpacht*, ed. E. Lauterpacht, Vol.2, (Cambridge: Cambridge University Press, 1975), p.393-394.

particularly fluid one in which traditions are capable of withstanding significant shifts in their contents.

The third indication of Lauterpacht's understanding of the term 'tradition' is couched in the particular details of the first notion of the 'Grotian tradition' he discusses. Here Lauterpacht simply employs the same 'Grotian tradition' that had previously appeared in a different form in the works of James Kent, Henry Wheaton and John Westlake, and with its current title in Lassa Oppenheim's *International Law*. Thus, in a conventional sense, the 'Grotian tradition' simply stands as an intermediary pattern of thought between the contending natural and positive law traditions, achieving a "synthesis of natural law and State practice."[179] Grotius, Lauterpacht writes, is "impossible to classify...as belonging to any of the accepted schools of thought" and, furthermore, cannot even be considered a 'Grotian'. As will be seen shortly however, Lauterpacht directly contradicts this claim later with the assertion that Grotius viewed both consent and natural law as the dual foundations of international law.[180] However, what is important here is the fact that with regard to this particular variant of the 'Grotian tradition', Lauterpacht understood the term 'tradition' in particularly vague and imprecise terms. Thus in his later work, *Human Rights and International Law* he writes;

> When, in 1758, Vattel was calling his treatise *Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la conduite et aux affaires des*

[179] Lauterpacht, "Grotian Tradition", p.311.

[180] *ibid.*, p.329.

> *Nations et des Souverains*, he was giving expression to one of the salient features of modern international law. In this respect – the recourse to natural law – there was only a difference of emphasis between the so-called naturalists, Grotians, and positivists. The rigid distinction between these three schools of thought was an afterthought of the positivist period in the twentieth century – a period which was but of short duration.[181]

As such, this variant of the Grotian tradition is an analytical one retaining no necessary connection to Grotius. It is simply a classification device although, as made apparent in the discussion above, the bounds of its categories must not be seen as absolute. However, it is the second variant of the 'Grotian tradition' that is of greatest significance to its subsequent development. Many points of contact with the first – can in many ways be seen as an attempt to argue simultaneously against realist and extreme idealist thought and both legal positivism and pure natural law, by interpreting Grotius' *De Jure Belli ac Pacis* as the universal *via media.*

The Grotian Tradition II

The second variant of the 'Grotian tradition' evident in Lauterpacht's work is derived directly from the works of Hugo Grotius and has, as its central focus, the position of morality in international law. Although Lauterpacht's reasons for choosing Grotius as the namesake of his crusade are manifold including, for example, the assertion that he is "the acknowledged greatest exponent of the Law of

[181] Lauterpacht, *Human Rights and International Relations,* (London: Steven & Sons, 1950), p.115.

Nations",[182] it is his characterisation of Grotius as a moral figurehead that is of greatest significance. Thus, he writes that *De Jure Belli ac Pacis* has about it "an atmosphere of strong conviction, of reforming zeal, of moral fervour" and that these qualities were "also typical of Grotius himself."[183] Two pages on he continues that "[w]hat Grotius did was to endow international law with unprecedented dignity and authority by making it part not only of a general system of jurisprudence but also of a universal moral code."[184] Finally, the adulation concludes with the claim that *De Jure Belli ac Pacis* "satisfied the craving, in jurist and layman alike, for a moral content in the law."[185] Thus, not only is the 'Grotian tradition' to be a moral tradition incorporating the principles of "generosity, gratitude, pity [and] charity", but they are thought to be derived explicitly from Grotius himself.

The first substantive section of Lauterpacht's article is devoted to the characterisation of Hugo Grotius and an overview of his general theory of the law of nations. Brushing aside with "astonished impatience" claims that *De Jure Belli ac Pacis* is a "superficial, hasty, and pretentious production", Lauterpacht continues his adoration of Grotius by arguing that it is "a dazzling exhibition of learning."[186] Despite the continuous praise however, the work is not without serious problems. First Lauterpacht notes that Grotius' understanding of the law of nature is often vague and changeable remarking that "we are often at a loss as to the true meaning

[182] *ibid.*, p.308.

[183] *ibid.*, p.361.

[184] *ibid.*, p.363.

[185] *ibid.*, p.364.

[186] *ibid.*, p.310.

which he attaches" to it.[187] In large part, this observation is inspired by Lauterpacht's desire to reconcile the apparent secularisation of Grotius' natural law with its distinctly ecclesiastical foundations. As it is clearly neither possible nor desirable to attempt to enforce an artificial coherence on Grotius' thought, Lauterpacht makes the unsatisfactory conclusion that Grotius 'oscillated' between two conceptions of the law of nature, favouring the secular variant but "resort[ing] to God for assistance" when it did not provide him with the arguments he was searching for.[188] This reasoning seems to indicate an overwhelming lack of comfort in ascribing particular religious persuasions to intellectual scholars that would not be surprising given his family history and Zionist sentiments.

The second problem Lauterpacht finds with *De Jure Belli ac Pacis* is that it apparently abandons his original objective, "the humanization of the conduct of war."[189] However, Lauterpacht seems to equate 'humanization' with the complete 'obviation' of war's inhumane practices. Although he concedes that for Grotius to rule all war unjust would render his work meaningless in a world of continual conflict, Lauterpacht seeks the legal abolition of the inhumanity of war. In doing so, he implies that the principles of humanity, charity and honour which accompanied Grotius' call for *temperamenta* in war do not constitute a satisfactory 'humanization of the conduct of war'.[190] In large part, this can also be attributed to his

[187] *ibid.*, p.314.

[188] *ibid.*, p.316.

[189] *ibid.*, p.319.

[190] *ibid.*, p.320.

unwillingness to consider the force of the Christian elements of Grotius' writings. Thus he writes that the general in the field would likely not consider an impending battle the "proper occasion for exhibiting the virtues of Christian charity – kindly and humane as they may have been as individuals."[191] Rather, contrary to Grotius' firm belief that Christians ought to exhibit Christian morals at all times, particularly in the conduct of war, Lauterpacht is in favour of more strictly defined legal limitations on the conduct of war. In particular, the most obvious problem with Grotius' morality here of particular personal pertinence to Lauterpacht is that the call to Christian morality is not a universal one leaving members of other faiths outside the bounds of his higher morality. Nonetheless, despite his limitations, Grotius is "identified with the progression of international law to a true system of law both in its legal and in its ethical conduct."[192]

Eleven Principles

The Grotian tradition of Lauterpacht's incarnation is comprised of eleven principle features:

> the subjection of the totality of international relations to the rule of law; the acceptance of the law of nature as an independent source of international law; the affirmation of the social nature of man as the basis of the law of nature; the recognition of the essential identity of States and individuals; the rejection of 'reason of State'; the distinction between just and unjust war;

[191] *ibid.*, p.321.

[192] *ibid.*, p.327.

> the doctrine of qualified neutrality; the binding force of promises; the fundamental rights and freedoms of the individual; the idea of peace; and the tradition of idealism and progress.[193]

The remainder of this section will discuss each of these in turn.

i) The subjection of the totality of international relations to the rule of law

Lauterpacht deems the first element of the 'Grotian tradition' as both the 'central theme' and 'main characteristic' of *De Jure Belli ac Pacis*.[194] By claiming that the 'totality' of international relations is subjected to the rule of law, both Grotius and Lauterpacht fundamentally limit the rights of states. In particular, a distinction is drawn between the just and unjust causes of war and, most importantly, an "absolute faculty of action in self-preservation" is denied to states.[195] As such, Lauterpacht picks up Grotius' claim that even in pursuit of self-preservation, the actions of states are bound by the constraints of the law. Highlighting the existence of an identical argument in the work of John Westlake, who argues that "self-preservation...does not constitute a principle," he writes, citing Westlake that self-preservation is;

> a primitive instinct, and an absolute instinct so far as it has not been tamed by reason and law, but one great function of the law is to tame it...In

[193] *ibid.*, p.363.

[194] *ibid.*, p.327.

[195] *ibid.*, p.328.

> principle we may not hurt another or infringe his rights, even for our self-preservation, when he has not failed in any duty towards us.[196]

What is more, contrary to contemporary interpretations of Grotius' work that limit the bounds of his 'universal' law of nations to the Christian nations of Europe, Lauterpacht maintains that the 'orbit' of international law is not limited to the "States of Christian civilization".[197] Rather, Grotius explicitly maintains that treaties and agreements entered into between 'civilised' states and 'infidels' were equally binding as those amongst European states. With this Lauterpacht establishes the 'universality' of the 'Grotian tradition' and hence the applicability of law to the conduct of states.

ii) The acceptance of the Law of Nature as an independent source of international law

The second element of the 'Grotian tradition' constitutes the reiteration of Lauterpacht's earlier claim that "[i]nternational law is much more than the will of States."[198] Grotius, Lauterpacht writes, "accepted as self-evident the proposition that the sovereign – the State – is bound by the law of Nations and the law of Nature."[199] What is most significant about the discussion of this element of the 'Grotian tradition' is Lauterpacht's argument that the law of nature supplied Grotius with a means of "supplementing the voluntary Law of Nations...in the light of

[196] Westlake quoted in Lauterpacht, *ibid.*

[197] Lauterpacht, "Grotian Tradition", p.329.

[198] Lauterpacht, "The Reality of the Law of Nations", p.33.

[199] Lauterpacht, "Grotian Tradition", p.329.

ethics and reason."[200] With regard to the place of reason in the subsequent development of international law, Lauterpacht contends that this infusion of reason is evident even in the works of staunch positivists such as W.E. Hall and Hans Kelsen. What is more, he argues again that despite attempts to remain wholly divorced from moral principles even Kelsen permits the principle of *pacta sunt servanda*, evident in Grotius' law of nations, to creep into his own work.[201] Lauterpacht provides the following explanation for the inability of international law to wholly divorce itself from principles of morality originating within the common precepts of the law of nature:

> The fact that while within the State it is not essential to give to the ideas of a higher law – of natural law – a function superior to that of providing the inarticulate ethical premises underlying judicial decisions or, in the last resort, of the philosophical and political justification of the right of resistance, in the international society the position is radically different. There – in a society deprived of normal legislative and judicial organs – the function of natural law, whatever may be its form, must approximate more closely to that of a direct source of law.[202]

These principles of natural law evident in the law of nations are also universally recognised and universally applicable. In affirming this position, Lauterpacht cites the judgement of Justice Story in *La Jeune Eugénie*, "one of the most lucid and most uncompromising assertions of this aspect of the Grotian tradition", when he

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[200] *ibid.*, p.330.

[201] *ibid.*, p.331.

[202] *ibid.*, p.331.

that "[i]t may be unequivocally affirmed...that every doctrine, that may be fairly deduced by correct reasoning from the rights and duties of nations, and the nature of moral obligations, may theoretically be said to exist in the Law of Nations."[203] Thus, although Lauterpacht concedes that natural law has rightly been charged with "vagueness and arbitrariness", its moral force is preferable to the "arbitrariness and insolence of naked force."[204]

iii) The affirmation of the social nature of man as the basis of the law of nature

As Lauterpacht highlights, questions surrounding the fundamental elements of human nature constitute "perhaps *the* problem...of political thought."[205] Indeed, Grotius' characterisation of humans as "being intrinsically moved by a desire for social life, endowed with an ample measure of goodness, altruism, and morality" has faced strong opposition, most notably from the likes of Thomas Hobbes.[206] Siding with Grotius' more optimistic view of human nature then, Lauterpacht can conceive of no other way to underpin a progressive approach to the development of international law. Again emphasising the salience of moral principles in *De Jure Belli ac Pacis* here related to human nature, he highlights the frequency with which "the law of love, the law of charity, of Christian duty, of honour, of goodness, and to the injunctions of divine law and the Gospel" are made, concluding that "the appeal to morality [is], without interfering with the legal character of the exposition,

[203] *ibid.*, p.332.

[204] *ibid.*, p.333.

[205] *ibid.*

[206] *ibid.*

a constant theme of the treatise."[207] This moral endowment and associated optimism regarding both human nature and the associated law of nations is, Lauterpacht supposes, one of the fundamental reasons for the continued popularity of the Grotian tradition in the international sphere. In this, he is certainly correct, for, as made clear in the previous chapter, the Grotian tradition has been most often resuscitated from the constant threat of intellectual exile when the need and/or desire has arisen for a moral approach to international law. Thus Lauterpacht concludes this section by writing that "much of the appeal and potentialities of the Grotian tradition lies in the lesson which can be drawn from his conception of the social nature and constitution of man as a rational being in whom the element of moral obligation and foresight asserts itself triumphantly over unbridled selfishness and passion, both within the State and in the relations of States."[208]

iv) The recognition of the essential identity of States and individuals

The fourth element of the Grotian tradition maintains that the "conduct of nations and of rulers" is bound by the same "element of morality and rationality" ascribed to individuals above.[209] This common moral identity is not derived from the notion that "States are *like* individuals" but is "due to the fact that States *are composed of* individual human beings."[210] This element is pervasive throughout Lauterpacht's writings, a tract of his obituary stating;

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[207] *ibid.*, p.334.

[208] *ibid.*, p.335-6.

[209] *ibid.*, p.336.

[210] *ibid.*

> His belief that the State exists for man and not man for the State, that the moral law applies in the same manner to public as to private conduct, that the use of force for the protection of private interests is alien to, whereas the judicial process is an expression of the moral nature of man that right is ultimately the only might, and that the protection of human freedom and human dignity are the only legitimate purposes of law and government, was not an academic conviction but a consuming fire – a fire which has consumed.[211]

This recognition of the essential identity of states and individuals, although also derived explicitly from the works of Hugo Grotius is specifically drawn from John Westlake's definition of international society in which the "duties and the rights of States are only the duties and the rights of men who compose them."[212] In order to maintain that states are capable of moral action cognisant of individuals' rights and duties, Lauterpacht presents an argument reminiscent of that used to refute E.H. Carr's claim that groups are incapable of morality, writing that "[t]he modern State is not a disorderly crowd given to uncontrollable eruptions of passion oblivious of moral scruples."[213]

v) The rejection of 'reason of State'

The fifth characteristic of the Grotian tradition represents a conglomeration of the previous four and maintains that, in accordance with the 'subjection of the totality of international relations to the rule of law' and the moral personality of states,

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[211] "Judge Lauterpacht", *British Yearbook of International Law*, Vol.25, (1959), p.x.

[212] Westlake quoted in Lauterpacht, "Grotian Tradition" p.337.

[213] Lauterpacht, *ibid.*, p.338.

raison d'état is not a justifiable cause of war. This rejection of the 'reason of State' is necessary if Grotius and Lauterpacht are to avoiding creating a double-standard of morality, one pertaining to individuals and the other to states. Lauterpacht goes to some length in the discussion of this element to demonstrate that in rejecting the *raison d'état* Grotius is refuting Machiavelli. What is more, he attributes the complete absence of any reference to Machiavelli in Grotius' works to a deliberate decision to ignore him. However, as extensive surveys of Grotius' works and notes reveal, no evidence exists to suggest that he had either read or even heard of Machiavelli. Nonetheless, the reasoning behind the rejection of the reason of state still stands, maintaining that allowing it would necessarily deprive other states of their right to the "benefit of judicial determination of disputed legal rights."[214]

vi) The distinction between just and unjust wars

As Lauterpacht notes, "Grotius did not invent" either the "denial of the absolute right of war [or] his consistent differentiation between just and unjust wars" evident in his works.[215] Rather they were concepts that originated in the Middle Ages and appeared in the works of Saint Augustine, Isidore of Seville, Giovanni da Legnano, Francisco de Vitoria and Francisco de Suárez. In fact, Lauterpacht concedes that "[i]n the elaboration of the cause of just war Grotius made no obvious advance upon the already elaborate treatment of the subject by his predecessors."[216] Nonetheless, it remains a central element of the Grotian tradition and one that is of

[214] Lauterpacht, "The Grotian", p.345.

[215] *ibid.*, p.347.

[216] *ibid.*

particular pertinence to Lauterpacht's assessment of contemporary international law. He explains that although almost immediately after the publication of *De Jure Belli ac Pacis* "[w]ar became the supreme right of sovereign States and the very hallmark of their sovereignty" thereby doing away with the need for a distinction between just and unjust wars, "law on the subject has now undergone a fundamental change."[217] In particular, "[w]ar has ceased to be a supreme prerogative of State" and as such, "[t]he Grotian distinction between just and unjust war is once more part of positive law."[218]

vii) The doctrine of qualified neutrality

The doctrine of qualified neutrality stems directly from Grotius' understanding of the distinction between just and unjust wars. The doctrine maintains that states are entitled to remain neutral in relation to States waging unjust wars. Thus, Lauterpacht quotes Grotius who writes that "[i]t is the duty of those who keep out of war to do nothing whereby he who supports a wicked cause may be rendered more powerful, or whereby the movements of him who wages an unjust war may be hampered."[219] Although this notion of qualified neutrality was rejected, along with the distinction between just and unjust wars, in the nineteenth century, Lauterpacht notes its return in the Covenant of the League of Nations. He writes that by "permitting neutrality and in obliging the Members to resort to sanctions and other measures of discrimination against the Covenant-breaking State" it incorporated the

[217] *ibid.*, p.349.

[218] *ibid.*

[219] *ibid.*, p.350.

principle of qualified neutrality.[220] However, "[u]nder the Charter of the United Nations neutrality is no longer an absolute right."[221] Rather, its members are "bound, if called upon to do so by a valid decision of the Security Council, to resort to war against a State waging an aggressive, an unjust, war."[222] In order to reconcile this with the position of qualified neutrality in the Grotian tradition, Lauterpacht presents the rather weak argument that it is possible to "appreciate the legal and ethical merits of this aspect of the Grotian tradition...without holding it applicable in international society."[223]

viii) The binding force of promises

The eighth element of the Grotian tradition is fairly straightforward and simply maintains that promises are binding and that obligations ought to be fulfilled in good faith. In accordance with the perceived universality of Grotius' work, this rule extends even to pirates, tyrants and infidels.[224] Without this notion, Lauterpacht explains, "the social contract is meaningless" and as such, "the obligation to keep promises is the principal tenet of the law of nature."[225]

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[220] *ibid.*, p.352.

[221] *ibid.*

[222] *ibid.*

[223] *ibid.*

[224] *ibid.*, p.353.

[225] *ibid.*

ix) The fundamental rights and freedoms of the individual

It is with the ninth element of the Grotian tradition that Lauterpacht runs into rather serious trouble. He writes that "[t]here is one perplexing aspect of the work of Grotius which appears to be alien to the spirit of his teaching as outlined so far, and which calls for careful examination, namely, his attitude to the question of the freedom of the individual in his relation to constituted authority."[226] Amongst those apparently anomalous aspects of Grotius' work are the justification of slavery, rejection of the idea that sovereignty rests with the people, denial of the right of resistance and designation as 'unjust' wars fought by oppressed people to reestablish their liberty.[227] Rather than dismiss these aspects of Grotius' work as inapplicable to the Grotian tradition, Lauterpacht seeks to explain and hence incorporate them by justifying Grotius' illiberal stance. On the question of slavery, for example, he presents Grotius' argument that as "reason prefers life to freedom...to yield to fate rather than to engage in a suicidal fight for liberty" is the preferable course of action.[228] Furthermore, Lauterpacht points out that the justification of the institution of slavery in Grotius' work is buttressed throughout by a "spirit of charity and mercy."[229] Thus, rather than concede that for all his liberal moral principles, Grotius retained a number of ideas that are antithetical to twentieth century 'Grotian' morality, Lauterpacht is at pains to enforce a form of

[226] *ibid.*, p.354.

[227] *ibid.*, p.355-356.

[228] *ibid.*, p.356.

[229] *ibid.*

conceptual coherence upon him. The reasons for this become apparent shortly thereafter.

As Koskenniemi notes, one of Lauterpacht's over-riding desires throughout his career was to witness the establishment of an international society based on a fundamental respect for human rights.[230] What is more, these rights would ideally be 'enforced', thereby requiring a further doctrine of humanitarian intervention. In this, Lauterpacht is faced with a particularly tricky problem. Although he recognises that if it is to be seen as a complete system of law the 'Grotian tradition' must include a doctrine of humanitarian intervention, the only discussion of the doctrine in Grotius' work occurs in the illiberal context described above. Thus, Lauterpacht is forced to provide a sanitised version of those less acceptable aspects of Grotius' thinking in order to maintain the integrity of his larger project. In doing so he even goes so far as to suppose, not altogether accurately, that *De Jure Belli ac Pacis* includes "the first authoritative statement of the principle of humanitarian intervention."[231] However, as discussed in Chapter Three, Grotius certainly did not entertain a modern understanding of humanitarian intervention. Rather the first 'authoritative statement' of the principle is to be found in Christian von Wolff's denial of its validity.

[230] Koskenniemi, p.392, see *Human Rights and International Law*, p.114-126.

[231] Lauterpacht, "Grotian Tradition", p.357.

x) The idea of peace

The tenth element of Lauterpacht's Grotian tradition is as dubious as the ninth. Here again, Lauterpacht can be seen to outwardly interpret Grotius' writings in terms of his own aspirations. Thus, the tenth element of the Grotian tradition is not, as Lauterpacht's heading suggests, 'the idea of peace', but is rather the stronger principle of pacificism. Although Lauterpacht concedes that Grotius "does not deny that war is a legal institution", he derives an erroneous sense of pacificism from both Grotius' attempt to 'humanise' the rules of war and from his tangible hatred of war.[232] This corresponds directly to Lauterpacht's desire to see war outlawed that formed the central principle of his proposal for the continuation of the League of Nations in 1942[233] and again amounts to the prefiguring of Grotius' ideas with twentieth century concerns.

xi) The tradition of idealism and progress

Finally, and derived from the contention that a 'pacifist strain' can be identified running through Grotius' work, is the final claim that the Grotian tradition "may not inappropriately be called the tradition of progress and idealism."[234] Thus Lauterpacht concludes his discussion of the eleven elements of the Grotian tradition by listing the range of progressive ideas that can be attributed to Grotius, for

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[232] *ibid.*, p.358.

[233] Lauterpacht, "Undated Memorandum, 1942/43", in *Collected Papers,* Vol.3, p.481.

[234] Lauterpacht, "Grotian Tradition", p.359.

example, the legalization of the extradition of criminals and the theorisation of the practice of diplomatic immunity.[235]

'The Grotian Tradition in International Law' concludes, in part, by returning to one of the original aspects of its construction, the "intrusions of opportunism and realism."[236] Thankfully, he notes, these intrusions "did not decisively influence the character of *De Jure Belli ac Pacis*" but rather constitute a 'perennial problem' that has plagued Grotian scholarship ever since. He writes;

> It has been exposed to the inducement to supply a rationalization of inferior and irrational practices; to confuse, in the name of realism, the function of chronicling events with that of a critical exposition of rules of conduct worthy of the name of law; to furnish a philosophy of the second best; and to represent the transient manifestations of immaturity and anarchy in international relations as resulting necessarily and permanently from the nature of States the mutual relations of which, it is said, may be regulated by voluntary co-operation but not by a rule of law imposed and enforced from above.[237]

However, as the very last sentence of the article maintains;

> It is a measure of the greatness of the work of Grotius that all these questions should have found a place in his teaching and that he should have

[235] *ibid.*, p.359-60.

[236] *ibid.*, p.362.

[237] *ibid.*, p.362-363.

answered them in a spirit upon the acceptance of which depends the ultimate reality of the Law of Nations as a 'law properly so called'."[238]

Conclusion

Although the Grotian tradition of twentieth century international law owes its foundations and origins to the scholarship of the seventeenth, eighteenth and, in particular, nineteenth centuries, it was with the works of Hersch Lauterpacht that the most comprehensively articulated incarnation of the Grotian tradition emerged. In particular, it is with Lauterpacht's "Grotian Tradition in International Law" that the most thorough fusion of the analytical and historical Grotian traditions of previous scholarship is achieved. Here Lauterpacht entertains a dual understanding of what the term 'Grotian' means, deriving an analytical meaning from that pattern of thought that had previously appeared in the works of Lassa Oppenheim and stretches back to the late eighteenth and early nineteenth centuries. As will be seen in the following chapter, an identical notion of the 'Grotian tradition' as a vague analytical category appears in the work of Martin Wight, itself categorised under the broader banner of rationalist international thought. References to both Lauterpacht and Oppenheim in "The Balance of Power", composed at around the same time as Wight's lectures reveal that he was certainly familiar with their works.[239] In an historical sense however, Lauterpacht draws on historical elements

[238] *ibid.*, 365.

[239] Martin Wight, "The Balance of Power", in *Diplomatic Investigations: Essays on the Theory of International Politics*, ed. Herbert Butterfield and Martin Wight, (London: George Allen & Unwin, 1966), p.172.

of Grotius' work that have appeared repeatedly throughout the development of the 'Grotian tradition' but does not view them in terms of a path of historical transmission. Here, the 'Grotian tradition' is marked by the primacy of law, the social nature of humankind and an appeal to morality, here secular in orientation.

As will also be seen in the following chapter, the fact that Lauterpacht entertained two distinct notions of what the 'Grotian tradition' entails is of particular significance to its further development. In particular, although Bull relies heavily on Lauterpacht's 'Grotian tradition' in the formulation of his own "Grotian conception of international society", he does not maintain Lauterpacht's distinction between his two notions of what it is to be 'Grotian'. As a result, these two distinct sets of ideas are fused and thus facilitate the erroneous association of Hugo Grotius with concepts characteristic of the analytical variant of the tradition bearing his name.

VI

The 'Grotian Tradition' in the 'English School' of International Relations

> Trying to pick a path through the baroque thickets of Grotius' work, where profound and potent principles lurk in the shade of forgotten arguments and obsolete examples like violets beneath overgrown gigantic rhododendrons, I find that he does not say what I thought he said.[1]

Although a range of 'Grotian' traditions reside within the bounds of International Relations scholarship, a number of which will be mentioned in the course of this chapter, it is within the scholarship of the so-called 'English School' that the most prominent and influential development of the 'Grotian tradition' has occurred. However, the very notion that there is, in fact, an 'English School' of international relations is a matter of some contention in contemporary scholarship. In particular, questions abound as to whether or not the 'school' exists, who ought to be considered a 'member' of it and the extent to which it is centered around one or more conceptualisations of 'international society'. In light of this, the first section of this chapter is concerned with precisely what defines the 'English School', taking account of the various manners in which it has been constructed in contemporary histories of the discipline.

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[1] Martin Wight, "The origins of our states-system: geographical limits", in *Systems of States,* ed. Hedley Bull, (London: Leicester University Press, 1977), p.127.

The following two sections then discuss the development of the 'Grotian tradition' in the works of two of the most prominent members of the 'English School', Martin Wight and Hedley Bull, taking particular account of the manner in which each employs the term 'tradition' in their construction of the 'Grotian' and other traditions. In doing so, it demonstrates two shifts that have been critical to the development of the 'Grotian tradition'. First, although a weak notion of 'Grotian morality', somewhat akin to that which appeared in the work of Hersch Lauterpacht, can be discerned in Wight, this is almost entirely superseded by a broad notion of 'international society' in Bull. In particular, despite retaining a foundational connection to 'Grotian' scholarship concerned with the relationship between law and morality, Bull's 'Grotian tradition' constituted a new formulation of what it means to be 'Grotian'. Secondly, and of particular importance to the manner in which this 'new' 'Grotian tradition' is related to the historical figure of Hugo Grotius, a distinct shift in the type of conceptualisation of tradition can be identified between Wight and Bull. Thus, while Wight employs a vague 'analytical' notion of tradition, Bull promulgates a more historically oriented understanding of the term. When applied to the construction of the 'Grotian tradition', the transposition of the contents of Wight's analytical tradition to an actual historical one has, in large part, facilitated the conflation of Hugo Grotius with a range of twentieth century ideas. The final section of this chapter goes beyond Bull to consider the application of the 'Grotian tradition' and, in particular, its association

with the works of Grotius, to works addressing the normative justification of humanitarian intervention.

The 'English School'

The 'English School' is a title first coined by Roy E. Jones in 1981 to designate a group of scholars including the 'odd combination' of Charles Manning and Martin Wight, its "seminal thinkers", along with Hedley Bull, Michael Donelan, F.S. Northedge and Robert Purnell.[2] Centered around the London School of Economics and Political Science, Jones supposed the group's status as a 'school' was established by their "shared commitment to international relations conceived as a distinct, even autonomous subject", common 'professional task', style and philosophical position and, most importantly, their understanding of the "whole society of states as the peculiar matter of the study of international relations."[3] Significantly however, despite identifying the existence of an 'English school' of thought about international relations, Jones called for its closure. The English school was, in his view, a 'static', 'sterile regime', moving "inevitably from scholarship to scholasticism," and hence did not warrant continuation.[4] To make matters worse, Jones also argued that its defining concept, 'international society',

[2] Roy E. Jones, "The English school of international relations: a case for closure", *Review of International Studies,* Vol.7, (1981), p.1.

[3] *ibid.*, p.1 & 3.

[4] *ibid.*, p.12.

conceived here as a fusion of 'society' and 'sovereignty' was utterly 'meaningless', thereby attempting to add the final nail to the English school's coffin.

Although Hidemi Suganami published an alternative account of the English School two years later, including the writings of Charles Manning, Hedley Bull, F.S. Northedge and Alan James[5] - he has since conceded that Hedley Bull's response that Martin Wight also ought to be included is 'fair'[6] – it was not until 1988 that, with the work of Sheila Grader, Jones' article elicited a formal response.[7] Rather than call for the closure of the so-called English school however, Grader maintained that "evidence for such a 'school' does not exist."[8] In particular, she argued that although there is "merit in the suggestion that the identities of both the 'English school' and the 'British school' coalesce around the idea of international society," the question remains as to whether their proponents are "talking about the same thing."[9] According to Grader, the 'international societies' of the 'English school' were 'distinct', Manning's being "metaphysical", Bull's "empirical and normative",

[5] Hidemi Suganami, "The Structure of Institutionalism: An Anatomy of British Mainstream International Relations", *International Relations,* Vol.7, (1983), pp.363-381.

[6] Hidemi Suganami, "British Institutionalists, or the English School, 20 Years On", *International Relations,* Vol.17, No.3, (September 2003), p.255.

[7] For a discussion of the genesis of this piece and those of Suganami (1983) and Jones see, Suganami, *ibid.,* p.253-255.

[8] Sheila Grader, "The English school of international relations: evidence and evaluation", *Review of International Studies,* Vol.14, No.1, January 1988, p.41.

[9] *ibid.,* p.38.

and Northedge's tending "towards discounting international society in favour of the international system of states."[10]

A year later however, Peter Wilson argued, contrary to Grader, that "there are sound reasons why the identity of the school does to a large extent coalesce around the concept of international society."[11] Thus, Wilson argued, not only that the 'English school' could be said to exist and that its central focus, the concept of international society was in fact meaningful, but that "[t]here is no difference in the ontological status of the international society, as the concept is employed by Manning, Wight, Bull, James and more recent recruits to the school such as R.J. Vincent and James Mayall."[12] With this, he reasserted the existence and focus of what has continued to be known as the 'English school'.

In more recent scholarship, Tim Dunne has pointed to "an emerging consensus that the legitimate founders of the English School are Martin Wight, Herbert Butterfield, Hedley Bull and Adam Watson," although his account of its history focuses on Wight, Butterfield, Bull, Vincent and, in light of his overwhelming influence on British International Relations, E.H. Carr.[13] For Dunne, the English school's emergence and development largely took place within the context of the British

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[10] *ibid.*

[11] Peter Wilson, "The English school of international relations: a reply to Grader", *Review of International Studies,* Vol.15, (1989), p.49.

[12] *ibid.*, p.54.

[13] Tim Dunne, *Inventing International Society: A History of the English School,* (London: Macmillan, 1998), p.15.

Committee on the Theory of International Relations. Inspired by the American Rockefeller Committee formed in 1954,[14] the British Committee was instigated by Herbert Butterfield in 1958 with the aim of extending "'the frontiers of thought' about international politics."[15] Its membership included, in addition to Butterfield himself, the historians, Desmond Williams, Michael Howard and Geoffrey Hudson, a philosopher and theologian, Donald Mackinnon, representatives of the Foreign Office and Treasury, Adam Watson and William Armstrong, and the international relations theorists Martin Wight and, later, Hedley Bull. Perhaps the most significant British international relations scholar to be excluded from the Committee was E.H. Carr, for fear that his profile might hijack its broader aims.[16]

For Dunne, three 'preliminary articles' signify the identification of the 'English school' in the British Committee. Drawing on the work of Alasdair MacIntyre, discussed in Chapter Two, the first entails "self-identification with a particular tradition of enquiry" and is exhibited most prominently in the transmission of ideas from Martin Wight to Hedley Bull and on to R.J. Vincent.[17] Indeed, as will be seen shortly, there is certainly a sense in which Bull self-consciously 'followed' Wight, and Vincent then 'followed' Bull although, with regard to the development of the Grotian tradition, their points of divergence are probably of greater significance than their areas of congruence.

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[14] Led by Kenneth Thompson and Dean Rusk, the American Committee included Reinhold Niebuhr, Hans Morgenthau, Arnold Wolfers, Paul Nitze, W.T.R. Fox and Kenneth Waltz.

[15] Butterfield quoted in Dunne, *Inventing International Society*, p.91.

[16] Dunne, *ibid.*, p.93.

[17] *ibid.*, p.6-7.

The second 'preliminary article' according to which the English school is located in the British Committee entails a commitment to an interpretive approach to international relations scholarship and, although nominally attributed to Wight, centers around Bull's "International Theory: The Case for a Classical Approach." Indeed, with this article, Bull became engaged in a particularly acrimonious debate with J. David Singer that has been widely seen as constitutive of the 'second great debate' of International Relations, that between proponents of the contending 'scientist' approaches that emerged in response to the behavioural revolution and the classical or 'traditionalist' approach to the study of politics. Of particular importance to the construction of the Grotian tradition, in this article Bull argues that "by cutting themselves off from history and philosophy", practitioners of the scientific approach "have deprived themselves of the means of self-criticism, and in consequence have a view of their subject and its possibilities that is callow and brash."[18] In his equally venomous reply, Singer lashes out with the counterclaim that "[t]he first fantasy one encounters in this morose recitation is the assertion that the scientific approach is so intellectually puritanical that it eschews the use of wisdom, insight, intuition, and judgement. Nonesense!"[19] Nonetheless, in presenting this argument, Bull established the idea that "[f]or the English School,

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[18] Hedley Bull, "International Theory: The Case for a Classical Approach", *World Politics,* Vol.18, No.3, (April 1966), p.375.

[19] J. David Singer, "The Incomplete Theorist: Insight Without Evidence", in *Contending Approaches to International Politics,* ed. James N. Rosenau and Klaus Knorr, (Princeton: Princeton University Press, 1969), p.65; See also Morton Kaplan, "The New Great Debate: Traditionalism vs Science in International Relations" in the same volume, pp.39-61.

the most important questions in international relations were not amenable to empirical verification (as the would-be-scientists demanded)."[20]

Finally, and in accordance the second article, the third 'definitive article' of the English School centers around the conceptualisation of international theory as normative theory. Explaining precisely what 'normative theory' entails, Mervyn Frost writes that, in contrast to 'positivist' questions that ask what *is* done in a given situation, normative questions "require of us that we make judgements about what *ought* to be done."[21] In this vein, as will be seen shortly, each of Wight's 'three traditions' of international theory, "represents a distinctive moral" approach to the manner in which international society ought to be viewed and proceed.[22] In a similar manner, Bull's pluralist and solidarist conceptions of international society, also discussed further in the third section of this chapter, may be viewed as embodying alternative 'thin' and 'thick' "accounts of the nature of the common values to which states adhere."[23]

Despite constituting the most comprehensive intellectual history of the English school to date, Dunne's account of its membership and focus has faced both criticism and opposition in contemporary scholarship. In particular, Dunne's

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[20] Dunne, *Inventing International Society,* p.9.

[21] Mervyn Frost, *Ethics in International Relations: A Constitutive Theory,* (Cambridge: Cambridge University Press, 1996), p.2. See also Molly Cochran, *Normative Theory in International Relations: A Pragmatic Approach,* (Cambridge: Cambridge University Press, 1999).

[22] Dunne, *Inventing International Society,* p.9.

[23] *ibid.,* p.11.

portrayal of Carr as a directing influence on Butterfield, Wight and Bull has been particularly contentious. Indeed, amongst a barrage of criticisms, Ian Hall has recently both pointed out that "Carr was not a member of the British Committee – he was refused an invitation at Butterfield's instigation" and, argued that evidence of his specific influence on the proceedings of the British Committee is, at best, 'patchy'.[24] However, as Dunne readily acknowledges Carr's failure to be invited to join the British Committee, noting that "it is unlikely he would have been partial to the 'gentleman's club' *gestalt* of the Committee" even if an invitation were extended, the first of these criticisms is slightly unfair.[25] Hall does however, make the reasonable suggestion that the inclusion of Carr is "motivated by a desire to show the 'radical potentiality of the Grotian or rationalist tradition', and to link the school with the agenda of critical theorists such as Andrew Linklater who have invested much effort in his rehabilitation."[26] As will be seen shortly, this 'radicalised' version of the 'English school' drives both Nicholas Wheeler's *Saving Strangers: Humanitarian Intervention in International Society* and Dunne and Wheeler's co-edited *Human Rights in Global Politics.*[27]

In addition, Hall also questions the second 'definitive article' of Dunne's history, arguing that the "Committee, at least for the first decade of its existence, was united

[24] Ian Hall, "Still the English patient? Closures and inventions in the English school?", *International Affairs*, Vol.77, No.4, (October 2001), p.935 & 934.

[25] Dunne, *Inventing International Society*, p.93.

[26] Hall, "Still the English patient?", p.936.

[27] Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford: Oxford University Press, 2000); Tim Dunne and Nicholas Wheeler (eds.), *Human Rights in Global Politics*, (Cambridge: Cambridge University Press, 1999).

neither by political conviction nor by a devotion to a particular methodology."[28] In particular, he writes that Herbert Butterfield advocated "coming to an understanding of the 'right relationship', as he called it, between positivistic social science and more traditional approaches", arguing that this accommodation would be "preferable to the outright rejection of 'scientism'."[29] Thus, it was actually amongst those scholars that Roy Jones originally designated as the 'English school' centered around the LSE, that support for Wight and Bull's approach was most apparent.

Drawing together these two areas of contention, Robert Jackson has presented an alternative account of the English school that both denies the validity of its recent 'radicalisation' and focuses on a commitment to the 'classical approach'. In Jackson's account, Martin Wight, Hedley Bull and R.J. Vincent are designated the central members of the 'English school' on account of the "exceptional unity of theme and purpose" evident in their works.[30] In particular, Wight, Bull and Vincent are perceived to "share a remarkable degree of common intellectual perspective and sensibility in trying to grasp the human dimensions and problems of international relations" and, as such, "disclose a strong family resemblance."[31] What distinguishes his 'English school' from Dunne's in substantive terms is Jackson's denial of the 'radical potentiality' of scholarly enterprise. In particular, Jackson maintains, with Bull, that "scholars should be as disinterested as possible in order to

[28] Hall, "Still the English patient?", p.935.

[29] *ibid.*

[30] Robert Jackson, *The Global Covenant: Human Conduct in a World of States*, (Oxford: Oxford University Press, 2000), p.60.

[31] *ibid.*

carry out scholarship that is properly academic and is not a vehicle of their own personal values or political ideology."[32] Amongst those who do not, in his view, adhere to this 'detached' approach are critical theorists who "are not content with discerning and elucidating international society as a distinctive historical arrangement of political life", but are rather "seeking to change it if that is necessary to bring about a better life for the population of the planet."[33] As Hall points out, Jackson's claim to intellectual 'agnosticism' is "the essence of the position Jones attributed to the LSE 'English School' back in 1981," but was then, as it is now, critically flawed.[34] In particular, Hall argues that both Wight and Bull were engaged in promulgating their views on practical politics, Bull via his involvement in a British special advisory group on arms control in the 1960s and Wight via his advocacy of pacifism in the 1930s, and that Jackson's *Global Covenant* is not itself a 'disinterested' work but one that seeks to affirm the ethical worth of certain norms and institutions.[35]

As will be seen as this chapter progresses, it is within what Dunne conceives as the 'English school' that the development of the Grotian tradition has primarily occurred. This is not to say that Jackson has not himself contributed to its development, but rather that the account of the English school's history and development provided by Dunne is more useful in elucidating the central tenets of

[32] *ibid.*, p.81.

[33] *ibid.*, p.82.

[34] Hall, "Still the English patient?", p.937.

[35] *ibid.*

the most prominent mid- to late-twentieth century variants of the 'Grotian tradition'. Most obviously, it was in the context of the British Committee that Wight and Bull's most important contributions to the development of the Grotian tradition, "Western Values in International Relations" and "The Grotian Conception of International Society", were made and critiqued. Furthermore, regardless of whether or not Dunne's three 'definitive articles' of the English school can be applied to its 'members' with absolute consistency, there is certainly a sense in which each of the three has played an integral role in the Grotian tradition's development. In accordance with the first 'definitive article', the remainder of this chapter focuses on the works of Wight, Bull and Vincent as the most identifiable members of the tradition of inquiry according to which the Grotian tradition was transmitted from one generation of scholars to the next. Drawing together the second and third definitive articles, and in accordance with its development in the first half of the twentieth century, the Grotian tradition is also shown to be both normatively grounded and morally oriented, focusing on the morality of international society as the centerpiece of international relations theory.

Martin Wight

The explication of Martin Wight's contribution to the development of the 'Grotian tradition' is made particularly difficult by the relatively small number of works he published during his lifetime. Although, as Adam Roberts notes, Wight was "perhaps one of the most profound thinkers on international relations of his

generation of British academics,"[36] his most relevant contribution to International Relations scholarship amounts to a single text, *Power Politics*, published in 1946, and a handful of essays and papers, three of which were published in the edited collection, *Diplomatic Investigations: Essays in the Theory of World Politics* in 1966.[37] The reason most commonly offered for this relative paucity of publications is that "[t]he perfectionist in him seems to have resisted publication when, as is always the case, there was still room for improvement."[38] Indeed, as Wight himself wrote in a letter to a friend as he was preparing a revised version of *Power Politics* in 1971;

> I analyse with painful interest the perfectionism which seems to prevent me from being satisfied with anything. There is also that final act of will power which will seize a number of endlessly worked, disjointed, disparate chapters, and fuse them together into a whole in a blaze of creative integration.[39]

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[36] Adam Roberts, "Foreword" in Martin Wight, *International Theory: The Three Traditions,* ed. Gabriele Wight and Brian Porter, (London: Leicester University Press, 1991), p.xxiv.

[37] Martin Wight, *Power Politics,* ed. Hedley Bull and Carsten Holbraad, (London: Leicester University Press, 1978); "Why Is There No International Theory?", "The Balance of Power", "Western Values in International Relations", in Martin Wight and Herbert Butterfield (eds.), *Diplomatic Investigations: Essays on the Theory of World Politics,* (London: George Allen and Unwin, 1966). Although rarely referred to in contemporary international relations scholarship Wight also published, *The Development of the Legislative Council 1606-1945*, ed. M. Perham, (London: Faber, 1946); *The Gold Coast Legislative Council,* ed. M. Perham, (London: Faber, 1947); and *British Colonial Constitutions 1947,* (Oxford: Clarendon Press, 1952).

[38] Roberts, "Foreword", p.xxiv.

[39] Martin Wight in Hedley Bull, "Introduction: Martin Wight and the study of international relations", in Martin Wight, *Systems of States,* ed. Hedley Bull, (London: Leicester University Press, 1977), p.15.

With this in mind it is wholly unsurprising that Wight did not publish the incomplete and imperfect set of lecture notes that were published posthumously under the title of *International Theory: The Three Traditions* and has unfortunately become conventionally viewed as his definitive work in much International Relations scholarship.

Both the Grotian tradition and the figure of Hugo Grotius first appeared in Wight's work during the course of a lecture series first delivered in Chicago where Wight spent a year in the 1950s at the invitation of Hans Morgenthau. Following his return to the London School of Economics, the lectures evolved and gained notoriety both amongst students and within the academic community for bringing into 'sharp focus' what otherwise appeared to be the 'chaotic' world of international politics.[40] However, as a lecture series delivered over a ten year period, it is not at all surprising that its contents both evolved and changed with the thought of their presenter. As Michael Nicholson writes, "there is a lack of coherence about his thought", in part because of the oral tradition in which it was presented.[41] Similarly, discussing the oral tradition in general, E. Kedourie noted in the Fourth Martin Wight Memorial Lecture at the University of Sussex in 1978 that "[w]hen it is contrasted with, say, a book, mere speech is thought to be something fleeting and evanescent, not to be compared with the tangibility, fixity, durability of the written

[40] Brian Porter, "Preface" to *International Theory: The Three Traditions*, p.vii.

[41] Michael Nicholson, "The enigma of Martin Wight", *Review of International Studies*, Vol.7, No.1, (January 1981), p.15.

and the printed word."[42] Indeed, this certainly seems to be the case with Wight, Brian Porter noting in his preface to *International Theory: The Three Traditions* that the terms realist, rationalist and revolutionist at some stage seemed to morph into the not exactly synonymous Machiavellian, Grotian and Kantian traditions.[43]

Where possible therefore, those discussions of Grotius and the Grotian tradition either contained within the works published during Wight's lifetime, or that accord well with such works, will be given precedence over those pieced together from his lecture notes and those of his students that constitute *International Theory: The Three Traditions.* In particular "Western Values in International Relations" is taken as the most sophisticated presentation of the three traditions of international theory published during Wight's lifetime. Indeed, while Bull writes that "[s]ome of the material from these lectures later found its way into his single most important paper, 'Western Values in International Relations'",[44] Ian Hall maintains that "Western Values" represents a "distilled, compressed version of part of the lectures."[45] These points aside, it is also here, and in a paper presented to the British Committee in July 1971, entitled "The Origins of Our States-System: Geographical

[42] E. Kedourie, "Religion and politics: Arnold Toynbee and Martin Wight", *British Journal of International Studies,* Vol.5, (1979), p.6.

[43] Porter, "Preface", p.viii.

[44] Bull, "Martin Wight and the Study of International Relations", p.7. Martin Wight, "Western Values in International Relations" in *Diplomatic Investigations: Essays on the Theory of World Politics,* ed. Herbert Butterfield and Martin Wight, (London: George Allen & Unwin, 1966), pp.88-131.

[45] Ian Hall, "Challenge and Response: The Lasting Engagement of Arnold J. Toynbee and Martin Wight", *International Relations,* Vol.17, No.3, (September 2003),p.398.

Limits" that the most lucid and coherent discussions of both Grotius and the 'Grotian tradition' are to be found.[46]

Before moving on to discuss Wight's treatment of Grotius and the Grotian tradition however, it is helpful to elucidate a number of biographical features of Wight's life that have undoubtedly influenced his works, the most prominent of which is the central position of Christianity in his life. As Hedley Bull notes, in the 1930s, Wight adhered to a particular notion of Christian pacifism,[47] even going to far as to register as a conscientious objector during the Second World War. Although his pacifism later 'dropped away',[48] he remained, throughout his life "a fervent and rather traditionalist Anglican."[49] As Midgley suggests, Wight's Anglicanism may perhaps have directed his preference for the works of Grotius, a pious and revered protestant, over those of the Roman Catholic who preceded him intellectually, Francisco de Suárez, in whose work Wight identifies a number of crucial elements of the rationalist and Grotian traditions.[50] Wight's faith was of a particularly

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[46] Martin Wight, "The Origins of Our States-System: Geographical Limits" in *Systems of States,* ed. Hedley Bull, (London: Leicester University Press, 1977), pp.110-125.

[47] See Martin Wight, "Christian Pacifism" *Theology,* Vol.33, (1936), pp.12-21. As Scott M. Thomas notes, the argument in "Christian Pacifism" is "based on the incarnation and on the perfectionist ethic of the Sermon on the Mount, which left no room for a double standard between private life and public obligations." Scott M. Thomas, "Faith, history and Martin Wight: the role of religion in the historical sociology of the English school of International Relations", *International Affairs,* Vol.77, No.4, (October 2001), p.928.

[48] Bull, "Martin Wight and the Study of International Relations", p.5.

[49] Hall, "Challenge and Response", p.393.

[50] E.B.F. Midgley, "Natural law and the 'Anglo-Saxons' – some reflections in response to Hedley Bull", *British Journal of International Studies,* Vol.5, (1979), p.268.

pessimistic nature, shunning the notion of progress that had stood as a moral beacon for the Christian idealists of the interwar period, and viewing humans not as "well-meaning people doing our best", but rather less optimistically as "miserable sinners, living under judgement, with a heritage of sin to expiate."[51] Significantly, Wight maintained that Christianity had been 'perverted' by its willingness to adopt as its central doctrine the notion that 'God is Love'. Arguing against Arnold Toynbee's characterisation of Christianity in this manner, Wight writes in "The Crux for an Historian Brought up in the Christian Tradition" that "[t]he central declaration of Christianity is not that God *is* something, but that God *has done* something in history."[52] What is more, he continues to argue that "God's love is not a mere benevolence: it is a love that is identical with Holiness and Justice."[53] As such, Wight deviates significantly from the vague 'Christian love' doctrine around which much previous Grotian scholarship had been centered. Furthermore, and as will be seen shortly, Wight's faith not only exerted a significant impact upon his own treatment of international relations but constituted a source of great consternation for his intellectual progeny, Hedley Bull.

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[51] Martin Wight quoted in Hedley Bull, "Martin Wight and the Study of International Relations", p.12.

[52] Wight quoted in Kedourie, p.11. Martin Wight, "The Crux for an Historian Brought up in the Christian Tradition", in Arnold Toynbee, *A Study of History,* Vol. VII, (London: Cambridge University Press, 1954), pp.737-748.

[53] *ibid.*

Tradition

In constructing his famous triumvirate schematisation of international theory, Martin Wight employed a particular notion of 'tradition' as the primary means of classification. This specific understanding of tradition can be gleaned from two main sources; first, his explicit, though brief, discussions of the concept itself; and secondly, from the application of his theoretical understanding of tradition to the particular traditions he constructs. Again, a range of inconsistencies appear in the presentation of 'tradition' in *International Theory: The Three Traditions*, presumably due to the spontaneous and changing nature of oratory.

The theoretical notion of tradition employed in the formulation of the realist, rationalist and revolutionist traditions of Wight's construction is based on the premise that "political ideas do not change much" over time.[54] In explaining this claim, Wight quotes A.P. D'Entrevès' observation that;

> Men have kept repeating the same slogan over and over again. The novelty is very often only a question of accent.[55]

Similarly, Wight outwardly acknowledges the influence of Alexis de Tocqueville upon his categorisation of international theory, stating in the conclusion to *International Theory* that his aim had "been to try to bear out Tocqueville's point...that there is very little, if anything, new in political theory, that the great

[54] Wight, *International Theory*, p.5.

[55] A.P. D'Entrevès quoted in Wight, *ibid.*

moral debates of the past are in essence our debates."[56] Indeed, the Tocqueville passage to which he refers reads:

> It is unbelievable how many systems of morals and politics have been successively found, forgotten, rediscovered, forgotten again, to reappear a little later, always charming and surprising the world as if they were new, and bearing witness, not to the fecundity of the human spirit, but to the ignorance of men.[57]

As applied to the field of international theory, Wight's classification scheme is based on the corresponding claim that "[i]f one surveys the most illustrious writers who have treated of international theory since Machiavelli, and the principle ideas of this field which have been in circulation, it is strikingly plain that they fall into three groups, and the ideas into three traditions."[58] The three groups, or "inter-related political conditions which comprise the subject-matter" of international relations are outlined as 'international anarchy', 'diplomacy and commerce', and the 'concept of a society of states, or family of nations,'[59] and correspond respectively to the three traditions of realism, rationalism and revolutionism.

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[56] Wight, *ibid.*, p.268.

[57] Alexis de Tocqueville in Wight, *ibid.*, p.5.

[58] Wight, *ibid.*, p.7.

[59] *ibid.* In "An anatomy of international thought", published posthumously, Wight titles the three elements international anarchy, habitual intercourse and moral solidarity. Martin Wight, "An anatomy of international thought", *Review of International Studies*, Vol.13, (1987), pp.221-227.

The realist tradition, Wight argues, is comprised of "those who emphasise in international relations the element of anarchy, of power-politics, and of warfare,"[60] and is generally equated with the works of Machiavelli and Hobbes. Revolutionists, on the other hand, are "those who believe so passionately in the moral unity of the society of states or international society, that they identify themselves with it, and therefore they both claim to speak in the name of unity, and experience an overriding obligation to give effect to it, as the first aim of their international policies."[61] Standing between these two positions, the rationalist tradition of international theory focuses on instances of 'international intercourse' and in particular, patterns of 'diplomacy and commerce' in international relations:[62]

> [t]he Rationalists are those who concentrate on, and believe in the value of, the element of international intercourse in a condition predominantly of international anarchy. They believe that man, although manifestly a sinful and bloodthirsty creature, is also rational.[63]

As Jens Bartelson quite rightly points out, Wight's notion of 'tradition' is less concerned with the apparent passage through time of an idea or set of ideas, than with their apparent coherence within a given set of parameters.[64] In this vein, Wight writes that if the three traditions of international theory are viewed as 'patterns of

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[60] *ibid.*

[61] *ibid.*, p.8.

[62] *ibid.*, p.13. Similar ideas are expressed in Martin Wight's "An anatomy of international thought", *Review of International Studies,* Vol.13, (1987), pp.221-227.

[63] *ibid.*

[64] Jens Bartelson, "Short circuits: society and tradition in international relations theory", *Review of International Studies,* Vol.22, (1996), p.347.

thought' then they are defined by "logical inter-relation", whereby, in accordance with the "logical coherence of the complex of thought...acceptance of one unit-idea is likely to entail logically most of the others."[65] However, in a fairly conventional sense, Wight also defines 'traditions of thought' being "embodied in and handed down by writers and statesmen."[66] Thus, although coherence of thought is privileged in Wight's conceptualisation of 'tradition', the element of continuity remains.

That Wight intended his three traditions to be considered 'patterns of thought' is however, made clear in the characterisation of rationalism included in 'Western Values in International Relations' in which he writes that;

> [t]his pattern is persistent and recurrent. Sometimes eclipsed and distorted it has constantly reappeared and reasserted its authority, so that it may even seem something like a consensus of Western diplomatic opinion.[67]

In a similar vein, he also mentions that "there are other patterns of ideas in international history for which persistence, recurrence and coherence can be claimed," thus emphasising the central importance of coherence to his schematisation of international theory.[68] The relative unimportance of continuity in Wight's understanding of tradition is particularly apparent with regard to the

[65] Wight, "An anatomy", p.226.

[66] *ibid.*

[67] Wight, "Western Values", p.90-91.

[68] *ibid.*, p.91.

different manners in which he constructs the realist, rationalist and revolutionist traditions. The rationalist tradition is characterised as originating "with the Greeks and especially the Stoics," owing its 'upkeep' to the Catholic Church and following a path of transmission taking in the Jewish and Arab thinkers of the Middle Ages and the "Protestants, humanists and Rationalists" of the modern world.[69] Individual figures named in the evolution of the tradition include Aquinas, Vitoria, Suarez, Grotius, Hooker, Althusius, Locke, the Founding Fathers of the American Republic, Washington, Madison and Hamilton, Mill, Cobden, Mazzini, Tocqueville, Gladstone, Lincoln and Wilson, although this in no way represents an exhaustive roll-call.[70] Similarly the realist tradition is characterised as being "as self-conscious and continuous" as the rationalist tradition and is said to begin with the work of Machiavelli and include the subsequent writings of Bacon, Bodin, Spinoza, Hume, Frederick and Catherine, Bismarck, Treitschke, E.H. Carr, Morgenthau, Burnham, Kennan and Butterfield.[71] Most critically, there is an explicit sense in which these contributors are characterised as having 'continued the tradition' that is realism.

When it comes to the construction of the revolutionist tradition however, the element of continuity is less critical to its 'traditional' status. As Wight writes, the "Revolutionist ancestry of ideas and continuity of thought is ambiguous or uncertain...[h]ere continuity is least important; there is rather a series of

[69] Wight, *International Theory*, p.14.

[70] *ibid.*, p.16.

[71] *ibid.*, p.17.

disconnected illustrations of the same politico-philosophical truths."[72] The revolutionist tradition, unlike realism and rationalism, is consequently characterised as "less a stream than a series of waves."[73] That the revolutionist tradition is nonetheless termed a 'tradition' in Wight's assessment is testimony to the loose manner in which he understood the term. Indeed, the lectures upon which *International Theory* is based were explicitly presented as "an experiment in classification, in typology, and ...[an] exploration of continuity and recurrence, a study in the uniformity of political thought."[74] Thus, while Wight's traditions are marked by varying degrees of intellectual continuity and coherence, they "are not straightjackets, but organizing frameworks used to group closely related and often independent ideas together."[75] As such, Wight leaves room within his theoretical treatment of the term 'tradition' for the "illogicalities and discontinuities" that inevitably appear in their practical construction.[76]

This loose conceptualisation of 'tradition' is also particularly evident in Wight's discussion of the parameters of the Rationalist tradition:

> The Rationalist tradition is the broad middle road of European thinking. On one side of it the ground slopes upwards towards the crags and precipices of revolutionism, whether Christian or secular; on the other side it slopes down

[72] *ibid.*, p.12.

[73] *ibid.*

[74] *ibid.*, p.5.

[75] David S. Yost, "Wight and the Three Traditions: political philosophy and the theory of international relations", *International Affairs*, Vol.70, No.2, (April 1994), p.268.

[76] Wight, "An anatomy", p.226.

> towards the marshes and swamps of realism...It is a road on which I suppose all of use, in certain moods, feel we really belong and it is the road with the most conscious acknowledgement of continuity. On it can be seen the stout figure of Thomas Aquinas, whom Acton called 'the first Whig'; also Vitoria, the Neo-Scholastics who make the bridge between the medieval traditions of natural law and modern international thought. Hugo Grotius is there, with his offspring and descendents among Grotian writers on international law, together with Hooker, Althusius and John Locke, and the Founding Fathers of the American Republic, at least Washington, Madison and Hamilton, to say nothing of Jefferson.
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> It is a *broad* middle road, but just at this point it seems to become rather uncertainly wide; its edges are difficult to discern and the road itself seems sometimes disconcertingly narrow. Hamilton, for instance, seems to be on the road, but look again and he is to be found well away from it, on the turf over towards the marshes...; the above describes the general tradition of international thought here called Rationalist, and perhaps illustrates how the three traditions are not clear-cut pigeon holes, but can overlap.[77]

For Wight then, the three traditions of international theory are broad, overlapping and vaguely demarcated categories according to which both individual theorists and their common ideas can be classified. This is not to say that he does not equally appreciate the inherent dangers of categorisation. As mentioned in Chapter One, addressing this very issue, Wight writes that;

> ...all of this is merely classification and schematising. In all political and historical studies the purpose of building pigeon-holes is to reassure oneself that the raw material does *not* fit into them. Classification becomes valuable,

[77] Wight, *International Theory,* p.14-15.

> in humane studies, only at the point where it breaks down. The greatest political writers in international theory almost all straddle the frontiers dividing two of the traditions and most of these writers transcend their own systems.[78]

Thus, he writes that Hume's political theory, for example, "as expounded in *A Treatise on Human Nature* and in the *Essay on the Balance of Power* is Realist yet it has affinities with the Rationalist tradition."[79] Nonetheless, this recognition of the limitations of classification does little to ameliorate the impact of his use of the term tradition. In particular, Wight's inconsistent conceptualisation of 'tradition', at times approximating that of Krygier discussed in Chapter Two and at others resembling something akin to a paradigm, has certainly contributed to the entanglement of historical and analytical variants of the Grotian tradition in subsequent scholarship to be discussed shortly.

Disentangling the 'Three Traditions'

As the intermediary category of his triumvirate schematisation of international theory, Wight's rationalist category is constructed via the simultaneous acceptance and repudiation of elements of the realist and revolutionist traditions. Thus, one of its defining features is;

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[78] *ibid.*, p.259.

[79] *ibid.*, p.260.

> its quality of a *via media*. This pattern of idea usually appears as the *juste milieu* between definable extremes, whether it is Grotius saying: 'A remedy must be found for those who believe that in war nothing is lawful, and for those for whom all things are lawful in war' or Halifax's classic exposition of the balance of power in *The Character of a Trimmer*, or Gladstone's conception of the European Concert seen as a middle way between the radical noninterventionism of Cobden and Bright and the *Realpolitik* of Beaconsfield and Bismarck.[80]

Although the 'definable extremes' to which Wight refers are, in the broadest sense, those represented by the contending traditions of realism and revolutionism, they are intermingled with the natural law and legal positivist categories ordinarily associated with international legal scholarship in "Western Values in International Relations." This raises the important question of whether or not Wight's scheme constitutes a new way of dividing international theory or simply amounted to the re-labeling of the positivist, naturalist, Grotian triumvirate of international law, or the reconfiguration of the 'first great debate' waged between realism and idealism in international relations.

In the first instance, Wight appears to provide a definitive answer to this question, arguing that while the "three old traditions or schools of international law, the Grotians, naturalists and positivists, are relevant" to the realist, rationalist, revolutionist classification of international theory, they "do not exactly

[80] Wight, "Western Values", p.91.

correspond."[81] As such, and as will become apparent as this discussion continues, no neat and tidy set of relationships between these sets of ideas can be discerned. The position of realism is relatively simple. The realism of Wight is the realism of Machiavelli, Hobbes and Carr. What is more, Wight maintains that legal positivists are inductive realists, thereby conceiving legal positivism as a subcategory of realism in a similar manner to the classification of the Grotian tradition as a subcategory of rationalism.[82] This set of relationships thus accords well with Wight's intention to derive three traditions of international thought that incorporated past thinking in both international legal and philosophical scholarship.

Revolutionism however, does not equate directly to either realism or idealism, or to natural or positive law. As Peter Wilson notes, of Wight's three categories it is revolutionism that "bears the closest resemblance to idealism" however, that they are not directly synonymous is made apparent by Wight's classification of a range of well-known idealists, including Norman Angell, Gilbert Murray and Alfred Zimmern, as rationalists.[83] Indeed, in much of Wight's work the revolutionist tradition seems to oscillate between idealism and Marxism and, as it does not incorporate a well established theory of international law, generally stands outside the positivist/naturalist/Grotian scheme.

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[81] Wight, *International Theory,* p.233.

[82] *ibid.*, p.233.

[83] Peter Wilson, "Introduction: *The Twenty Years' Crisis* and the Category of 'Idealism' in International Relations", in *Thinkers of the Twenty Years' Crisis: Inter-War Idealism Reassessed,* ed. David Long and Peter Wilson, (Oxford: Clarendon Press, 1995), p.5.

Rationalism combines elements of realism and revolutionism. As Wight argues, it 'dove-tails' revolutionism in its idealism and shares a realist understanding of the anarchical nature of international relations, thereby implying that it stands between both realism and idealism, and the realist and revolutionist traditions.[84] As mentioned above, although its acceptance of the primacy of state sovereignty precludes it from being synonymous with idealism, the most prominent idealists of the inter-war period are all classified as rationalists. To further confuse matters, Wight maintains that Grotians, in the international legal sense of the term, are rationalists, although clearly the converse, that rationalists are Grotians, does not hold.[85] Grotians, as conventionally defined, combine elements of natural and positive law, and maintain "that both are essential to the law of nations."[86] With reference to this discussion, Edward Keene writes that Wight "twisted himself into knots trying to explain how Grotians were similar to rationalists, while at the same time retaining a sense of the differences between the two traditions."[87] In light of his loose conceptualisation of the term tradition, these divisions are perfectly plausible. Rationalism stands as the intermediary between realism and revolutionism, whilst the Grotian tradition is a sub-category of rationalism and itself stands between the natural and positive law traditions. As the traditions all overlap at various junctures, the fact that revolutionism does not equate directly to idealism is immaterial.

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[84] Wight, *International Theory*, p.162.

[85] *ibid.*, p.14.

[86] *ibid.*

[87] Keene, *Beyond the Anarchical Society*, p.34.

Three central features of Wight's scheme are therefore apparent here. First, in light of the porous boundaries separating the three traditions of realism, rationalism and revolutionism, a large amount of liberty is afforded the classification of both theorists and their ideas. Thus, as mentioned above, both theorists and ideas may appear in more than one category, Wight conceding that the most important theorists generally 'straddle the frontiers' of two distinct traditions.[88] Secondly, as the *via media* between a range of 'definable extremes', rationalism is a far more elastic term than realism or revolutionism. Indeed, its derivation as the repudiation of the two traditions between which it stands indicates that it is not an independently conceived and thus tightly bounded category, but one constituted by the conglomeration of the vaguely compatible elements of the other two. As such, it is reasonably employed as the *via media* between realism and idealism, realism and revolutionism, and legal positivism and natural law. What is important is not whether or not the extremes can be equated with one another, for clearly there are no absolutes in Wight's scheme, but that the central characteristic of rationalism is its intermediary status. In particular, Wight seeks to justify rationalism's intermediary position by arguing that "[t]he golden mean can be an overcautious and ignoble principle as a guide to action, but it may also be an index to the accumulated experience of a civilization which has valued disciplined scepticism and canonized prudence as a political virtue."[89]

[88] Wight, *International Theory*, p.260.

[89] Wight, "Western Values", p.91.

Finally, the relationship between these contending classification schemes is made slightly clearer in Wight's diagrammatical representation of the structure of international relations. Here, what Wight terms the 'three stages of society and law' are presented as three concentric circles. In the inner circle stand the state and municipal law, whilst in the outer circle Wight places natural law and mankind. Forming the intermediary circle between the two are international society and the law of nations. What is significant about this scheme is that natural law exists in a more broadly based sphere than the law of nations, thereby exerting an influence upon it whilst not being synonymous with it. As Wight makes clear, it was only with the works of Francisco de Vitoria that the *jus gentium* and the *jus naturae* came to be confused, thereby creating the set of convoluted relationships described above.

Rationalism

The most coherent and polished explanation of the central precepts of Wight's rationalist tradition is found in 'Western Values in International Relations'. It is also here that the partial fusion of Lauterpacht's two distinct understandings of the term 'Grotian' is apparent. In elaborating upon the rationalist position, here deemed indicative of 'western values', Wight discusses its approach to four particular subjects; the nature of international society, the maintenance of order in international society, intervention and international morality. Thus, although a particular notion of international society is central to his discussion and is deemed

the definitive concept of the rationalist tradition in subsequent scholarship, it is simply one a number of subjects with which he is concerned.

The first section of Wight's explication of the rationalist tradition is therefore concerned with the nature of international society and international law. Adopting elements of the international legal scheme discussed in the previous chapter, the rationalist tradition is viewed as the intermediary between legal positivism and cosmopolitanism. Thus, Wight writes that "by recognizing no international society except the society of sovereign states, [legal positivism] denies the existence of an effective international society."[90] Although Wight distinguishes between the 'extreme' and 'general' variants of this approach in *International Theory,* legal positivism as thus portrayed accords well with a broadly conceived notion of realism.[91] At the "opposite extreme" however, international society is conceived as "none other than the community of mankind" understood in terms of the *civitas maxima.*[92] For proponents of this perspective, it is the notion of an international society comprised of *states* that is the '*unreal* thing'. The rationalist tradition then stands, characteristically, as the *via media* between these extremes:

> Between the belief that the society of states is non-existent or at best a polite fiction, and the belief that it is the chrysalis for the community of mankind, lies a more complex conception of international society. It does not derogate from the moral claims of states, conceding that they are, in Suarez's phrase,

[90] *ibid.,* p.93.

[91] Wight, *International Theory,* p.36.

[92] Wight, "Western Values", p.93.

> *communitates perfectae* (exercising valid political authority); but it sees them as relatively, not absolutely perfect, and as parts of a greater whole. It does not see international society as ready to supersede domestic society; but it notes that international society actually exercises restraints upon its members.[93]

As Wight concedes, this concept of international society is "full of qualifications and imprecision," embodying the tension of the opposites it reconciles and, in doing so, constituting a more accurate picture of international experience as it is.[94] Drawing these opposites together then, rationalism posits international society as 'true society', derived from the assumed innate sociability of humankind and based on the mutual recognition of international law as the institution best suited to maintaining order in what is otherwise an anarchical society. It is defined as;

> the habitual intercourse of independent communities, beginning in the Christendom of Western Europe and gradually extending throughout the world. It is manifest in the diplomatic system; in the conscious maintenance of the balance of power to preserve the independence of the member-communities; in the regular operations of international law, whose binding force is accepted over a wide though politically unimportant range of subjects; in economic, social and technical interdependence and the functional international institutions established latterly to regulate it.[95]

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[93] *ibid.*, p.95.

[94] *ibid.*, p.95-6.

[95] *ibid.*, p.96-7.

Thus, on the one hand, the rationalist view of international society includes the distinctly realist notions of the balance of power and primacy of independent state sovereignty, whilst on the other, it promotes the 'binding force' of international law.

Within Wight's discussion of the central precepts of international society, Grotius is noted for the 'fruitful imprecision' with which he describes an antecedent notion of international society in a manifold number of ways.[96] However, what Grotius lacks in precision he well and truly makes up for in Wight's opinion with his claim that both states and individuals are the members of his ambiguously conceived international society. Following this train of thought then, John Westlake's 'Grotian' definition of the international society of states is heralded as the definitive expression of this doctrine:

> The society of states, having European civilization, or the international society, is the most comprehensive form of society among men, but it is among men that it exists. States are its immediate, men its ultimate members. The duties and rights of states are only the duties and rights of the men who compose them.[97]

Thus, although Grotius is mentioned in the context of the rationalist theory of international society, he is not attributed with its inception or deemed its most important proponent.

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[96] See p.181.

[97] Westlake quoted in Wight, "Western Values", p.102.

It is in Wight's discussion of contending approaches to the maintenance of order in international society that the term 'Grotian' first appears in his work. Again, the rationalist tradition is conceived as the *via media* between two extremes, this time the realist claim that "[i]f there is no international society, then...[t]here is no call to maintain order," and the revolutionist vision of the assimilation of the domestic and international realms.[98] If, however, international society does exist, its maintenance generally entails four postulates. First is the notion that "international society exists and survives by virtue of some core of common standards and common custom."[99] Second is the notion that "the tranquility of international society and the freedom of its members require an even distribution of power" somewhat akin to the balance of power system.[100] Third is the "right to self-defence and of coercion", whilst the final postulate maintains that these rights to self-defence and coercion must be undertaken collectively. Here Grotius emerges as the herald of the cognate idea that for order to be maintained in international society, a "penal code for states [is] as indispensable as a penal code for citizens" is within domestic civil society.[101] This notion, Wight contends, found expression in the Covenant of the League of Nations, the 'Grotians' discovering, with what he calls a "kind of messianic wonder, that the doctrines of the master had at last, after three hundred years, been embodied in the first written constitution of international society."[102]

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[98] *ibid.*, p.102-3.

[99] *ibid.*, p.103.

[100] *ibid.*

[101] *ibid.*, p.105.

[102] *ibid.*

Herein lies a pertinent discussion of the development of the relationship between law and morality in the 'Grotian tradition', starting with Grotius and extending to the twentieth century 'Grotians'. As Wight notes, for Grotius, the "moral and legal order were the same" and were maintained by the instrument of punishment applicable to criminal states.[103] However, he writes, "[a]fter Westphalia, the moral and legal order became increasingly identified with the balance of power, a development that the strict Grotians like the Dutch jurist Vollenhoven regard as a dilution, even a perversion of the gospel."[104] However, the Covenant of the League of Nations reformulates this point of contention by "combining the Grotian doctrine about the enforcement of law against a delinquent state with the system of the balance of power."[105] This is apparent in the works of Brierly, Hancock, Salter and Zimmern, Wight thereby implying that they are at least quasi-Grotians. Strict Grotians however, obviously derived their ideas purely from Grotius himself.

This intermediary position is also evident in Wight's discussion of the contentious issue of intervention in international society. Thus, standing "[b]etween the opposing positions of non-interventionism and interventionism," represented by the legal positivist and cosmopolitan approaches respectively, is "a central doctrine of what might be called the moral interdependence of peoples."[106] This doctrine maintains that although intervention is always unwelcome, it is occasionally

[103] *ibid.*, p.106.

[104] *ibid.*

[105] *ibid.*, p.107.

[106] *ibid.*, p.116.

necessary in international relations because of "the permanent instability of the balance of power and the permanent inequality in the moral development of its members."[107] As intervention necessarily "conflicts with the right of independence", it ought to be viewed as the "exception rather than the rule."[108] At heart, this doctrine owes its foundations to the sense in which international society is conceived as being immediately constituted by states, but ultimately constituted by individuals. Grotius is named as a proponent of this doctrine with his claim that "in addition to the particular care of their own state," kings "are also burdened by a general responsibility for human society."[109] Although Wight is more cautious than Lauterpacht in his discussion of the existence of a doctrine of humanitarian intervention in Grotius' work, he does acknowledge a limited form of the doctrine.

Finally, it is with the discussion of international morality that the central tenets of realism and natural law are conceived in opposition to one another, thereby fusing the two debates that Lauterpacht addresses in his 'Grotian tradition'. Thus, on the one hand, Wight conceived of writers such as Kenneth Thompson, Hans Morgenthau and, of course, E.H. Carr, whose "kingdom of the fairies that seduces the intelligence of men is not the Roman Church but the League of Nations...and the principal old wives who circulate its fables are President Wilson, Lord Cecil, Professors Toynbee and Zimmern and the Winston Churchill of *Arms and the*

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[107] *ibid.*

[108] *ibid.*

[109] *ibid.*, Grotius, *De Jure Belli ac Pacis,* II.XX.XLIV.1, p.508.

Covenant."[110] As discussed in the previous chapter and, as Kenneth Thompson writes, according to this realist perspective, states "tend to be repositories of their own morality."[111] At the opposite extreme lies the natural law tradition, the 'vitality' of which Wight commends on a number of occasions:

> It might be thought enough to say of the natural law ethic that it survives in an awareness of the moral significance and the moral context of all political action. But the moral context is focused more precisely where the politically expedient and the morally permissible come into conflict.[112]

It is in the *via media* between these two extremes that Wight contends the most prominent articulation of 'western values' is to be found. Here, as in "The Origins of Our States-System: Geographical Limits", Wight endorses a 'double-standard' of morality that provides a "permissible accommodation between moral necessity and practical demands."[113] He justifies this intermediary position by arguing that;

> it assumes that moral standards can be upheld without the heavens falling. And it assumes that the fabric of social and political life will be maintained, without accepting the doctrine that to preserve it any measures are permissible. For it assumes that the upholding of moral standards will in itself tend to strengthen the fabric of political life.[114]

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[110] *ibid.*, p.121.

[111] Kenneth Thompson in *ibid.*, p.121.

[112] Wight, *ibid.*, p.124.

[113] *ibid.*, p.128; Wight, "The origins of our states-system", p.125-8.

[114] *ibid.*, p.130-131.

However, this is not the only dual moral standard evident in Wight's work. Indeed, in addition to the pattern of concentric circles described above, Wight also depicts the states-system in Grotius as a double set of circles. In the outer circle stands the law of nature, embracing all mankind and promoting the unity of the human race.[115] However, the inner circle is the *corpus Christianorum*, a unique circle "bound by the law of Christ."[116] Although a glimpse of Wight's partiality to some form of Christian morality is evident here it, and indeed, all forms of morality discussed within his work, are not elaborated upon.

However, what is clear is that Wight discusses a notion of morality as a feature of the rationalist tradition that broadly equates to that which appeared in Lauterpacht's 'Grotian tradition'. In particular, both the principles of justice and charity that had previously appeared in Grotius' works and the relationship between law and morality characteristic of the general development of the 'Grotian tradition' are discussed in general terms and with specific reference to Hugo Grotius himself.

Hedley Bull

Hedley Bull remains perhaps the most significant proponent of the Grotian tradition in twentieth century International Relations scholarship. An Australian by birth and

[115] Wight, "The origins of our states-system", p.125 & 128.

[116] *ibid.*, p.128.

character,[117] Bull was, in Tim Dunne's view, "a hybrid of two political cultures."[118] On the one hand, he arrived at the University of Oxford to study for a B.Phil in Politics having graduated from the University of Sydney with a Bachelor of Arts in 1952, during a time when Australian political culture was marked by "a heightened sense of exceptionalism."[119] Indeed, as will be seen shortly, this ingrained Australianism is particularly evident with Bull's sceptical approach to questions of religion and morality. Although Bull made the pilgrimage to the United Kingdom that has become a typical part of Australian life, he only returned to Australia for a ten year Professorship of International Relations in the Research School of Pacific and Asian Studies at the Australian National University. Thus the remainder of his career was conducted in Britain.

As a junior academic at the London School of Economics, Bull is known to have attended Martin Wight's lectures in the mid-1950s. As Bull readily confesses, the lectures exerted a "profound impression" upon him, going so far as to write that "[e]ver since that time I have felt in the shadow of Martin Wight's thought – humbled by it, a constant borrower from it, always hoping to transcend it but never able to escape from it."[120] However, as will be seen shortly, Bull did far more than borrow Wight's three traditions, he wholly appropriated them, solidifying their porous boundaries, imposing a new set of titles upon them and embellishing their

[117] As Tim Dunne notes, "Adam Watson described Bull as 'a very dinkum Aussie'." *Inventing International Society,* p.137.

[118] *ibid.*

[119] *ibid.*

[120] Bull, "Martin Wight and the theory of international relations", p.ix.

contents. Thus, the vaguely defined realist, rationalist and revolutionist traditions of Wight's thought became with Bull the less flexibly demarcated Hobbesian, Grotian and Kantian traditions. In Bull's view, rationalism *was* Grotianism and Grotius was not only the progenitor of the 'Grotian tradition' but its herald, exemplar and its most eminent member. This new set of associations is most evident in the most important work in the transformation of the Grotian tradition, Bull's "The Grotian Conception of International Society."

As a result of his association with Wight, Bull became a member of the British Committee on the Theory of International Relations in 1961. "The Grotian Conception of International Society" was presented to the Committee in 1962 as an attempt to redress a gap in the Committee's project, namely, the analysis of the role of law in international society. As will be seen shortly, it instigated both lively discussion and fierce criticism from members of the British Committee, garnering support from Herbert Butterfield and opposition from Wight. "The Grotian Conception" was followed in 1977 by Bull's most famous work, *The Anarchical Society: A Study of Order in World Politics,* a text that reiterates the central principles of the "Grotian Conception" albeit in a slightly altered form. Continuing his interest in the concept of international society, together with Adam Watson, Bull edited *The Expansion of International Society* in 1984[121] and, as Watson writes, intended to write a "companion volume" entitled *The Revolt Against the West* "which would show Asia, Africa, Latin America and Oceania as rejecting not only

[121] Hedley Bull and Adam Watson (eds.), *The Expansion of International Society,* (Oxford: Clarendon Press, 1984).

Euro/North American political, administrative and economic standards, but also the West's cultural standards and practices."[122] However, the most important sea-change in Bull's thought came with the Hagey Lectures delivered at the University of Waterloo in Ontario in 1984, published under the title of *Justice in International Relations.*[123] It is in this work, followed by his contribution to the co-edited volume *Hugo Grotius and International Relations,* "The Importance of Hugo Grotius in the Study of International Relations", that Bull appears to move towards the 'Grotian' or solidarist position he had spent much of his career criticising as detrimental to the maintenance of international order. Unfortunately however, Bull died in 1985 without revealing the full extent of this apparent change of heart.

Tradition

Following Wight, Hedley Bull conceives the 'Grotian tradition' as standing between the Hobbesian and Kantian traditions, and as combining elements of the natural and positive law traditions. However, whereas Wight did not assume that the terms rationalist and Grotian were absolutely synonymous, the characterisation of the Grotian tradition as a sub-category of the rationalist tradition is overlooked by Bull. Thus, in Bull we see the absolute equation of rationalism with Grotianism, and the solidification of the boundaries separating Wight's three traditions:

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[122] Adam Watson, "Recollection of my discussion with Hedley Bull about the place in the history of International Relations of the idea of the Anarchical Society" (July 2002), https://www.leeds.ac.uk/polis/englishschool/watson-bull02.doc.

[123] Hedley Bull, *Justice in International Relations,* The Hagey Lectures, (Waterloo: University of Waterloo, 1984).

> Throughout the history of the modern states system there have been three competing traditions of thought: the Hobbesian or realist tradition, which views international politics as a state of war; the Kantian or universalist tradition, which sees at work in international politics a potential community of mankind; and the Grotian or internationalist tradition, which views international politics as taking place within an international society.[124]

Similarly, whereas Grotius stands as one of many members of the Grotian tradition in Wight's theory, Bull makes a far more direct association between the works of Grotius and the Grotian tradition. Given his conflation of the two entities then, it is somewhat ironic that Bull was amongst the first to hint, albeit unconsciously, that a meaningful distinction might be made between Grotius' ideas and Grotian thought in contemporary International Relations. In 'The Grotian Conception of International Society', perhaps the seminal work in the broadly understood 'Grotian tradition' of International Relations, he writes;

> The reason for giving it this name does not lie in the part which the writings of Grotius have played in bringing about this twentieth century doctrine, although this is by no means negligible; but simply in the measure of identity that exists between the one and the other. We shall have occasion to consider the differences as well as the resemblances between Grotius himself and the twentieth-century neo-Grotians; but the resemblances are remarkable enough to warrant our treatment of *De Jure Belli ac Pacis* as containing the classical presentation of the same view.[125]

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[124] Bull, *Anarchical Society,* p.23.

[125] Bull, "The Grotian Conception", p.51.

However, Bull's attempt to draw a set of meaningful comparisons between Grotius' works and the ideas of the twentieth century neo-Grotians, as he terms them, is critically limited. In particular, Schmidt's argument that the meaning of 'classic texts', such as Grotius' *De Jure Belli ac Pacis*, "is often already prefigured by reference to the tradition in which they are placed," springs to mind.[126] On an even more fundamental level however, Bull's understanding of Grotius appears to be directed by the works of Cornelius van Vollenhoven, Lassa Oppenheim and Hersch Lauterpacht, all of whom were instrumental in the development of the 'Grotian tradition' of international law in the twentieth century, and whom Bull considered members of a wider 'Grotian tradition'. Thus, Bull's understanding of Grotius as an intellectual entity separable from the 'Grotian tradition' (what he would call the neo-Grotians), is situated wholly within what he constitutes as the tradition itself. It is therefore not at all surprising that Bull is able to draw such 'remarkable' resemblances between the two sets of ideas.[127]

Just fifteen pages on however, having established the degree of synonymy between Grotius and the Grotian tradition, Bull attempts once again to distinguish them, writing;

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[126] Brian C. Schmidt, "The historiography of academic international relations", *Review of International Studies,* Vol.20, (1994), p.359.

[127] A. Claire Cutler makes a similar argument to Bull in "The 'Grotian tradition' in international relations", *Review of International Studies,* Vol.7 (1991), pp.41-65. However, like Bull, Cutler's interpretation of Grotius has been prefigured by her reliance on a number of writers who are members of the 'Grotian tradition'.

> ...the positions of Grotius and of the twentieth century neo-Grotians are quite distinct. Grotius stands at the birth of international society and is rightly regarded as one of its midwives. For him the terminology of a universal state is what is still normal, and the language of international relations can only be spoken with an effort. The neo-Grotians, however, have three more centuries of the theory and practice of international society behind them; their novelty lies not in moving away from the domestic model in international relations, but in moving back towards it.[128]

Benedict Kingsbury cites this passage as evidence of Bull's 'systematic rigour', maintaining that it "caused him to distinguish sharply between the writings of Grotius and the tenets of a 'Grotian tradition'."[129] As will be seen shortly however, despite again attempting to theoretically dissect Grotius and the 'Grotian tradition', Bull's subsequent discussions continue to conflate the two entities.

The transformation of Wight's traditions into more solidly demarcated categories and the contingent reassociation of the Grotian tradition with the works of Hugo Grotius can in large part be attributed to the contending notions of tradition employed by Wight and Bull. With regard to the theoretical notion of tradition apparent in Wight's three traditions of international theory, Bull writes that "Wight himself was the first to warn against the danger of reifying the concepts he had suggested."[130] Revealingly, he continues that "the Machiavellian, Grotian and

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[128] Bull, "The Grotian Conception", p.66.

[129] Benedict Kingsbury, "Grotius, Law and Moral Scepticism: Theory and Practice in the Thought of Hedley Bull", in *Classical Theories of International Relations,* ed. Ian Clark and Iver B. Neumann, (Houndmills: Macmillan, 1996), p.42.

[130] *ibid.*, p.xiii.

Kantian traditions were merely paradigms," and that "not even Machiavelli, for example, was in the strict sense a Machiavellian."[131] Thus, Bull seems to acknowledge Wight's insistence that the "three traditions were only to be taken as paradigms", and even then not "too seriously."[132] Bull's apparent understanding of the dangers inherent in the practice of categorisation is also reflected in a number of other works published around the same time. Thus, in "The Theory of International Politics 1919-1969" he argues that "[i]t is not possible to divide the theoretical works of the last half century into neat categories or schools that are logically exhaustive and exclusive of one another."[133] Similarly, in putting his "case for a classical approach" he acknowledges that "[t]here are dangers in lumping them [proponents of the scientific approach] all together, and it may be inevitable that criticisms directed at the whole of the genre will be unfair to some parts of it."[134] However, the pivotal point in Bull's thinking is revealed in his criticism of Wight's view and the subsequent claim that "one has to take [the three traditions] seriously, or not at all."[135] Indeed, this contention may be seen as being largely responsible for the solidification of what Bull recognised had been in Wight's view three vaguely defined traditions.

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[131] *ibid.*

[132] *ibid.*, p.xviii.

[133] Hedley Bull, "The Theory of International Politics 1919-1969", in *International Politics 1919-1969,* ed. Brian Porter, (London: Oxford University Press, 1972), p.33.

[134] Hedley Bull, "International Theory: The Case for a Classical Approach", *World Politics,* Vol.XVIII, No.3, (April 1966), p.363.

[135] Bull, "Martin Wight", p.xviii.

On a more fundamental level however, Bull's argument and contingent conceptualisation of the Grotian tradition reveals the extent to which he viewed Wight's analytical traditions as actual historical ones with solidly demarcated boundaries and an explicitly discernible path of transmission. In particular, "Bull criticizes Wight for giving in to the temptation of coherence"[136] with the following argument:

> Much that has been said about International Relations in the past cannot be related significantly to these traditions at all. Wight was, I believe, too ambitious in attributing to the Machiavellians, the Grotians and the Kantians distinctive views not only about war, peace, diplomacy, intervention and other matters of International Relations but about human psychology, about irony and tragedy, about methodology and epistemology. There is a point at which the debate Wight is describing ceases to be one that has actually taken place, and becomes one that he has invented; at this point his work is not an exercise in the history of ideas, so much as the exposition of an imaginary philosophical conversation.[137]

However, Bull similarly 'invents' a Grotian tradition, only his pays more attention to the element of continuity than the element of coherence. Thus, Bull, unable to resist the equal temptation of locating "the origin of the Grotian tradition in the works of Grotius himself"[138] constructs a singular pattern of thought transmitted from Grotius to the twentieth century. In doing so, the central precepts of this broader 'Grotian tradition' are demonstrated by reference to actual passages of

[136] Bartelson, "Short circuits", p.347.

[137] Bull, "Martin Wight", p.xviii.

[138] Bartelson, "Short circuits", p.347.

Grotius' most famous work, *De Jure Belli ac Pacis,* thus firmly establishing the position of Grotius in the Grotian tradition.

The Grotian Conception

As its title suggests, "The Grotian Conception of International Society" pivots about the concept of international society. International society is defined in general terms as;

> a group of states, conscious of common interests and common values, [who] form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the workings of common institutions. If states today form an international society...this is because, recognising certain common interests and perhaps some common values, they regard themselves as bound by certain rules in their dealings with one another, such as that they should respect one another's claims to independence, that they should honour agreements into which they enter, and that they should be subject to certain limitations in exercising force against one another. At the same time they cooperate in the workings of institutions such as the forms of procedures of international law, the machinery of diplomacy and general international organisation, and the customs and conventions of war.[139]

Bull entertains two understandings of the term 'Grotian' that are associated with this conception of international society. In a broad sense, the 'Grotian tradition' is defined by an acceptance of the supposed existence of international society and is thought to be synonymous with the rationalist tradition of Wight's conception.

[139] Bull, *Anarchical Society.*, p.13.

However, in its narrow sense, the Grotian tradition is conceived as the solidarist variant of the broader tradition and stands in opposition to the alternative 'pluralist' conception of international society.[140] It is this solidarist form of the 'Grotian tradition', understood in contradistinction to pluralism, that is the central concern of "The Grotian Conception of International Society." However, before these contending approaches are discussed, it is necessary to back track a little in order to account for this division in the first place.

As Tim Dunne has noted on a number of occasions, for Bull, international society "can only be understood in contradistinction to the idea of a states system."[141] However, the states-system does not just stand in contradistinction to international society but exists as one of the two constituent components of its modern form. As such, Bull contends that while the existence of an international society "presupposes an international system", the converse does not apply.[142] This notion of an international states-system is explicitly derived from Heeren's conceptualisation discussed in Chapter Four and is said to exist, in Bull's terms "when two or more states have sufficient contact between them, and have sufficient impact on one another's decisions, to cause them to behave – at least in some measure – as parts of a whole."[143] Thus, Bull reasons that without this degree of contact it is not possible for states to become "conscious of common interests or

[140] *ibid.*, p.310.

[141] Tim Dunne, "New thinking on international society", *British Journal of Politics and International Relations,* Vol.3, No.2, (June 2001), p.226.

[142] Bull, *Anarchical Society,* p.13.

[143] *ibid.*, p.9. Heeren discussed on p.12.

values" essential to the existence of international society.[144] For Bull, as for his English school colleagues, the modern concept of international society is constituted by two sets of ideas, Heeren's *Staaten-system* and the much earlier notion that the force of the *jus gentium* is located in the *societas gentium.*

In light of the dual strands of thought from which the concept of international society is derived, Bull also identifies within it an inherent tension between the concepts of order, that "pattern of activity that sustains the elementary or primary goals of the society of states,"[145] and justice, variously defined. These goals include, "preservation of the system and society of states itself", "maintaining the independence or external sovereignty of individual states", "peace" and the "limitation of violence resulting in death or bodily harm, the keeping of promises and the stabilization of possession by rules of property."[146] Justice, on the other hand, "is a term which can ultimately be given only some kind of private or subjective definition" and comes in three forms; international or interstate justice, individual or human justice, and cosmopolitan or world justice.[147] While Bull concedes that "justice, in any of its forms, is realizable only in a context of order", he also argues that there is "an inherent tension between the order provided by the

[144] *ibid.*, p.13.

[145] *ibid.*, p.8.

[146] *ibid.*, p.16-18.

[147] *ibid.*, p.75-82.

system and society of states, and the various aspirations for justice that arise in world politics."[148]

In response to this problem, "The Grotian Conception of International Society" distinguishes between the solidarist and pluralist approaches to the concept of international society, heralding Grotius and Oppenheim as each perspective's respective prototypical representative. Recognising the multiple conceptions of justice that operate within the international system, pluralism "is a conception of international society founded upon the observation of the actual area of agreement between states and informed by a sense of the limitations within which this situation rules may be usefully made rules of law."[149] In affording the maintenance of order primacy in international affairs, pluralism contends that "international society is composed of states, and only states possess rights and duties in international law."[150] In doing so, it particularly endorses the maintenance of state sovereignty via respect for the principles of non-intervention and non-use of force. Thus, although individuals "may be regarded objects of international law", this is only at the behest of domestic legislation and, as such, the individual recipients of rights and duties in international law cannot be conceived as "members of international society in their own right."[151]

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[148] *ibid.*, p.83.

[149] Bull, "The Grotian Conception", p.71-2.

[150] *ibid.*, p.68.

[151] *ibid.*

Contrary to this, the 'solidarist' approach posits that the "members of international society are ultimately not states but individuals."[152] International society is consequently "a society formed by states and sovereigns" whose position "is secondary to that of the universal community of mankind" and it is from this that their legitimacy is derived.[153] As such, solidarism maintains respect for the right of the states to sovereign integrity, but does not conceive this as an absolute right. Characterised as more convivial to the notion of justice in international society, solidarism's "central assumption is that of the solidarity, or potential solidarity, of most states in the world in upholding the collective will of the society of states against challenges to it."[154] It consequently stands in direct opposition to the pluralist view that states "are capable of agreeing only for certain minimum purposes which fall short of the enforcement of the law."[155] Significantly, Bull contends that the second, narrow understanding of the term 'Grotian', defined as "the solidarist form...of the doctrine that there is a society of states...united Grotius and the twentieth century neo-Grotians, in opposition to the pluralist conception of international society entertained by Vattel and later positivist writers."[156]

In presenting the solidarist and pluralist approaches as a debate between Grotius and Oppenheim, Bull explicitly seeks to extend the debate instigated by Cornelius van Vollenhoven earlier in the century that sought to defend the solidarism of

[152] *ibid.*

[153] *ibid.*

[154] Bull, *Anarchical Society*, p.230.

[155] Bull, "The Grotian Conception", p.52.

[156] Bull, *Anarchical Society*, p.310.

Grotius against the pluralism of Vattel.[157] However, a number of problems are apparent with this endeavour at the outset. As hinted at above, Bull seems to suggest that the ideas of Grotius are commensurate with the central precepts of contemporary solidarism. In large part, this can be attributed to the overwhelming extent to which Bull relies on Lauterpacht's interpretation of *De Jure Belli ac Pacis*. By doing so, as Dunne writes;

> ...Bull infers that the 'central Grotian assumption' of solidarity *is* the central assumption of Grotius. Such a distortion flows easily from Bull's attempt to read the tension between the power political order and the normative legal order in terms of a dialogue between Oppenheim and Grotius. His instrumental approach to the history of ideas is evident in the discussion that followed: 'I had in mind', Bull reflected, 'to criticise the conception of international relations embodied in the League and United Nations and to some extent in Western thinking about international relations'. If Bull's target was the League of Nations (and the internationalist views that underpinned it) then why take the labyrinthine route of associating it with the work of Grotius?[158]

Of course the reason why Bull chose to attack the League of Nations via the works of Grotius is most probably due to the manner in which its inventors and proponents were considered 'Grotians' in subsequent scholarship. However, by deriving his understanding of Grotius' works purely from the interpretation of one of those he sought to criticise, the Grotius that Bull addresses is, at least in part, a figment of Lauterpacht's imagination.

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[157] Bull, "The Grotian Conception", p.51 & 52.

[158] Dunne, *Inventing International Society,* p.101.

Bull seeks to actively criticise the 'solidarist' or narrowly conceived Grotian position for two main reasons. First is the claim that solidarism has exerted "an influence positively detrimental to international order."[159] Thus, he argues that "by imposing upon international society a strain that it cannot bear", namely the imposition of a supposed, though in actual fact false, solidarity of interests, "it has the effect of undermining those structures of the system which might otherwise be secure."[160] Exactly what these systemic structures are is not specified in this context, although it can be assumed that they equate to those discussed above with relation to international order. In Bull's view then, pluralism is more conducive to the maintenance of order with its recognition that "the actual area of agreement between states" is far more limited than solidarism supposes.[161]

Secondly, Bull is particularly sceptical of the assertion that any form of common morality, implied by the central precepts of the solidarist approach, can be identified in international relations. This scepticism is particularly displayed in his critique of E.B.F. Midgley's *The Natural Law Tradition and the Theory of International Relations,* which he describes as "dauntingly massive and impressively learned, if [an] avowedly dogmatic and profoundly reactionary

[159] *ibid.*, p.70.

[160] *ibid.*

[161] *ibid.*, p.70-71.

attempt to rehabilitate the Thomist philosophy of natural law."[162] In particular, Bull highlights what he believes to be the "majestic outlandishness" of Midgley's claim that the secularisation and later rejection of natural law constituted serious "crimes".[163] Revealing his outward discomfort with the avowedly Christian elements of Midgley's work, Bull particularly criticises his "reliance on Christian revelation, his statement that the fundamental principles of his work are confirmed by the authority of the Church and his view that natural law cannot effectively be upheld today except by theists."[164] However, Bull's most substantial criticism of Midgley's work centers around his presentation of "moral issues in terms of "antinomies and paradoxes"."[165] In particular, he argues, contrary to Midgley, that moral questions can only be answered "by reference to moral rules whose validity we assume", that is, according to rational argument.[166] However, as Midgley's impressive reply points out, rather that outwardly reject natural law in the manner which he purports to, Bull's view "comprises a peculiar combination of scepticism about, and nostalgia for, the natural law."[167]

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[162] Hedley Bull, "Natural law and international relations", *British Journal of International Studies*, Vol.5, (1979), p.171. Bull also similarly criticised Michael Donelan's edited collection *The Reason of States* in the *Time Literary Supplement* in 1978.

[163] *ibid.*, p.175 & 178.

[164] *ibid.*, p.181.

[165] *ibid.*, p.179.

[166] *ibid.*, p.180.

[167] Midgley, p.262.

Indeed, Bull also faced criticism on the moral front from his mentor Martin Wight who, in response to "The Grotian Conception of International Society" reiterated the point that;

> [t]he Grotian premise, explicit in both Grotius and his 20th century followers, is that war is an intolerable evil. H.B.'s alternative position is that war is a tolerable and necessary evil.[168]

Bull's paper fared slightly better with Butterfield, eliciting the following response:

> The real implication of Hedley Bull's lucid paper then – and I think it is a profound implication – is that the Grotian conception of international society gets in the way of a realistic view of the world situation. It leaves statesmen to think in terms of punishing unjust enemies rather than in terms of setting up a viable balance or distribution of power. The Grotian system sets up nations to thinking about international morality in an epoch when international morality may not be sufficient by itself to guarantee peace and stability. The Grotian conception sets statesmen and scholars thinking about the justice of the world order rather than the workability of the world order. And Hedley Bull is surely right in thinking that we are in such an early stage in the evolution of world society that the most we can hope for now is workability.[169]

However, the problems associated with Bull's pluralism are also considerable. Considered in isolation, by rejecting moral universalism, Bull precludes the possibility of a moral basis to the pluralist conception of international society at all.

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[168] Wight quoted in Dunne, *Inventing International Society*, p.103.

[169] Butterfield quoted in Dunne, p.103.

In this vein, Rengger questions whether it is possible to find answers to moral questions;

> unless there is, at least potentially, some standard outside the *existing* 'patterns of activity' which could allow us to say that A rather than B under circumstances X is more appropriate? As a form of ethical judgement this surely slides imperceptibly into a rather curious rule utilitarianism with a sliding scale of values; in principle nothing is forbidden, it depends on whatever the 'consensus of shared values' happens to permit at any given time.[170]

Bull's pluralism is also particularly problematic when considered in relation to the Grotian tradition. By having two definitions of what it means to be 'Grotian', one of which is almost untenably broad, Bull is able to classify a wide range of theorists, including both Grotius and Oppenheim, as 'Grotians' in the sense that they both appear to endorse a notion of international society. However, Oppenheim is not a good example of a broadly conceived 'Grotian' and narrowly conceived pluralist, most obviously because he was, in strictly international legal terms, not an analytical 'Grotian' but a legal positivist. In this vein, Vattel would have been a better representative of the pluralist position although this would have rendered Bull's work simply the converse of Van Vollenhoven's piece. Furthermore, Vattel's retention of elements of natural law would have caused Bull considerable difficulties. In large part, this may be seen as the direct result of Bull's

[170] N.J. Rengger, *International Relations, Political Theory and the Problem of Order: Beyond International Relations theory*, (London: Routledge, 2000), p.79.

overwhelming desire to see the traditions of international law as directly commensurate with Wight's three traditions.

By using Oppenheim here, pluralism is conceived as a broad Grotianism that includes an acceptance of the existence of international society but is infused with elements of legal positivism. In particular, it takes the state as the fundamental unit of international society and eschews any notion of common morality. Rather, cognisant with the morality of realism and legal positivism, in Bull's pluralism, the only acceptable form of morality is that of the individual, whether they be an individual human being within the state, or an individual state in international society. João Marques de Almeida attributes the legal positivist elements of Bull's pluralism to the influence of H.L.A. Hart on his thought, arguing that "Bull adopts what could be called a 'minimalist Hartian position'" by seeking to reduce "international law to a set of recognized and legitimate legal standards."[171] As such, Bull's pluralist approach, despite being categorised under the banner of the broadly conceived 'Grotian tradition' does not retain either of the elements that have defined it historically, an acceptance of the natural law foundations of international law and morality, and following from this, an acceptance of an inherent relationship between law and morality.

[171] João Marques de Almeida, "Challenging Realism by Returning to History: The British Committee's Contribution to International Relations 40 Years On", *International Relations,* Vol.17, No.3, (September 2003), p.292-293.

The Importance of Hugo Grotius

Despite the efforts with which Bull criticises the solidarist approach in *The Anarchical Society* and "The Grotian Conception of International Society", a distinct shift towards this position can be discerned in his later works. Nicholas Wheeler and Tim Dunne attempt to reconcile this move by characterising Bull as harbouring a 'pluralism of the intellect and solidarism of the will'.[172] In particular, they argue that "later Bull came to express increasing disillusionment with pluralism on the grounds that it could not provide for order among states and hence order among the wider society of humankind."[173] Evidence of this growing disillusionment first began to appear in the early 1980s and, in particular, in the Hagey Lectures of 1983. Here, despite his previous arguments against the solidarist approach, Bull discussed the notion of a "growing cosmopolitan awareness" according to which the West was able to "empathise with sections of humanity that are geographically or culturally distant from us."[174] Indeed, Bull's 'solidarist' turn was in large part driven by an increasing concern for the welfare needs of the Third World. He writes;

> For all this the Western countries today, and especially the United States, display an appalling lack of vision in their policies towards the South...No international order can endure in the future unless these states and people believe themselves to have a stake in its continuance. The issue that this

[172] Nicholas J. Wheeler and Timothy Dunne, "Hedley Bull's pluralism of the intellect and solidarism of the will", *International Affairs,* Vol.72, No.1, (1996), pp.91-107.

[173] *ibid.*, p.96.

[174] Bull quoted in *ibid.*, p.99. Bull, *Justice in International Relations,* p.12.

> raises for the Western powers is not mainly or even chiefly a moral one...We must take the Third World seriously primarily because of the vital interest we have in constructing an international order in which we ourselves will have a prospect of living in peace and security into the next century and beyond. This requires that we in the West should be ready to accommodate the demands of Third World countries for a redistribution of wealth and power in the international system.[175]

What is particularly significant about this piece is that it indicates Bull's recognition that in order to achieve order, states must pursue justice. As such, it stands in direct contradiction to the earlier claims of "The Grotian Conception" that the pursuit of justice was positively detrimental to the achievement and maintenance of international order. However, Bull concedes that "[t]he cosmopolitan society which is implied and presupposed in our talk of human rights exists only as an ideal, and we court great dangers if we allow ourselves to proceed as if it were a political and social framework already in place,"[176] thereby reining himself back in.

It is thus with "The Importance of Hugo Grotius" that the most profound shift in Bull's thinking is evident. Not only is Grotius bathed in an altogether more favourable light in this later work, but Bull also demonstrates a more sophisticated understanding of the history of ideas. Here, for the first time in Bull's work, the historical figure of Hugo Grotius is afforded treatment alongside the ideas of the 'Grotian tradition'. Thus, although Bull discusses aspects of Grotius' work in "The

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[175] Bull quoted in *ibid.*, p.101. Hedley Bull, "The international anarchy in the 1980s", *Australian Outlook,* Vol.37, No.3, December 1983, p.128-9.

[176] Bull, *Justice in International Relations,* p.13.

Grotian Conception", it is only with this later article that any discussion of the historical circumstances surrounding Grotius' life or the publication of *De Jure Belli ac Pacis* are included. This is not to suggest that all Bull has to say about Grotius is either useful or accurate, however. Like many of his predecessors, Bull focuses unnecessarily on Grotius' brief and unsuccessful diplomatic career, going so far as to suggest that he was the intellectual founder of the Peace of Westphalia.[177]

However, Bull does make two important concessions in this work. First, he admits that "[b]y no means all that Grotius has to say seems to support what we have been calling a solidarist point of view", even going so far as to recognise that pluralist elements can be found in Grotius' works.[178] Secondly, he also argues that "[i]t is absurd to read Grotius as if he were speaking to us directly about the problems of our own times", thereby further dissociating Grotius from the twentieth century Grotian tradition of his own construction.[179] It is difficult to determine precisely what these significant shifts in Bull's thinking mean, in large part because he passed away before having the opportunity to account for them in more detail. What is certain though, is that for the most part, the account of the Grotian tradition and discussion of the pluralist and solidarist approaches to the notion of international society in "The Grotian Conception of International Society" and *The Anarchical Society,* remain the most influential works in subsequent Grotian scholarship.

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[177] Bull, "The Importance of Hugo Grotius", p.75.

[178] *ibid.*, p.89.

[179] *ibid.*, p.91.

Beyond Bull

Beyond the work of Hedley Bull, two distinct strands of 'Grotian' scholarship can be discerned amongst theorists associated with the contemporary 'English School'. On the one hand, drawing on the work of Richard Falk, Jackson attempts to wrest the term 'Grotian' away from its purely solidarist association, writing that;

> Richard Falk is an advocate of a solidarist conception of international society in which the global community of humankind has normative priority and the society of states is in conflict with it. By contrast, classical international society scholars view the states system as the only practical institution presently at hand by which the values and interests of humankind can be defended and advanced. According to that approach, Hugo Grotius is the theorist *par excellence* of international society.[180]

Thus, for Jackson, reviving Falk's notion of the 'Grotian moment', the term 'Grotian' is fundamentally marked by an increasingly conventional tension between pluralist and solidarist norms. On the other hand, theorists concerned with the normative justification of humanitarian intervention have especially drawn upon the 'solidarist' variant of the 'Grotian tradition' and it is here that its most significant developments have occurred. However, standing between Bull and these contemporary theorists, is the work of R.J. Vincent.

[180] Jackson, p.379.

R.J. Vincent

Continuing the line of transmission that runs from Martin Wight to Hedley Bull, R.J. Vincent became Bull's protégé whilst writing his PhD at the Australian National University in the late 1960s and early 1970s. As will be seen shortly however, although much of Vincent's early work, including his PhD thesis, *Nonintervention and International Order,* is overtly influenced by Bull's preoccupation with questions of order in international society, his later work, in particular, *Human Rights and International Society,* certainly rejects Bull's pluralism in favour of a solidarist approach to international society. What is clear, however, is that Vincent certainly adopted the three traditions from Wight and Bull, defining a 'Grotian' in a broad sense as one who rejects the "facile account of the brutishness of international politics given by realists."[181] Explaining both his and Martin Wight's reasons for considering Burke a 'Grotian', he outlines the central tenets of the Grotian tradition as follows:

> ...war cannot be abandoned since it is the means for the attainment of justice in international politics, but its rigours can be mitigated by the conventions of the international community; the nature of man is depressing to contemplate when abandoned to its vulgar propensities, but there is the chance of his nobility when civilized by political institutions and directed by enlightened leadership; and the imperial government of less civilized societies was justified when it is conducted for their benefit. Law, order, and

[181] R.J. Vincent, "Edmund Burke and the theory of international relations", *Review of International Studies,* Vol.10, No.3, (July 1984), p.206.

the honouring of obligations: this runs the course of Wight's slogan for the Grotians.[182]

Significantly, although Burke is considered both a Grotian and a solidarist in his work, Vincent concludes by remarking that he could be categorised, in different ways, in each of Wight's three traditions, thereby "sweeping them all away."[183] Unfortunately however, he does not go on to consider what the implications of this might be for the three traditions in general.

Prior to this however, Vincent's work was marked by a tangible emphasis on the concept of order. *Nonintervention and International Order* argues that "[i]f international society is accurately described as being split up into islands of order, the distribution of which is determined by the principle of state sovereignty, then it is the function of the rule of nonintervention to draw attention to that distribution and require respect for it."[184] Thus, "[t]he principle of nonintervention placed at the frontiers of state sovereignty fulfils an analogous function to that of a "No Trespassing" sign standing at the perimeter of a piece of property held under domestic law."[185] What is more, Grotius, along with Pufendorf and Hobbes, is considered the 'precursor' of the doctrine of nonintervention for, as Vincent reasons, "their writings furnished ideas without which the principle could not have

[182] *ibid.*

[183] *ibid.*, p.212 & 216.

[184] R.J. Vincent, *Nonintervention and International Order,* (Princeton: Princeton University Press, 1974), p.330.

[185] *ibid.*, p.331.

found expression in the form which it took in the works of Wolff and Vattel."[186] Grotius' contribution is particularly assured in this vein as "he conceived of international law as a law which existed between sovereign states:"[187]

> International morality might then be impoverished by being the outcome of a decision to prefer the order established within the state, but the defence of it rests on the assertion that any more ambitious doctrine that neglects the reality of a morally plural world is likely to undermine the international moral order rather than to protect and advance it. The unglamorous doctrine of non-intervention bears witness to the minimal unity of international society and retains such universal validity as it has (universal that is in international society) by the acknowledgement on the part of state that most moral claims are to be made and met at a place other than in international society.[188]

Thus, although Vincent still maintains here that world society "conceived as a moral framework" has "not yet taken a form concrete enough to uphold" the 'noble ideas' it has nurtured, he acknowledges the "idea that states do have duties in the area of human rights that has informed the traditional doctrine of humanitarian intervention, so that if a state by its behaviour outrages the conscience of mankind it should not be entitled to invoke the principle of non-intervention."[189]

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[186] *ibid.*, p.22.

[187] *ibid.*

[188] R.J. Vincent, "Western Conceptions of a Universal Moral Order", *British Journal of International Studies*, Vol.4, No.1, (April 1978), p.28.

[189] *ibid.*, p.31 & 41.

However, it is in *Human Rights and International Relations* that Vincent's move to a minimal solidarist position is made complete. Here the principle of non-intervention is explicitly presented as evidence of the minimal solidarity of international society, "not the absence of morality but the recognition of its limits."[190] The 'morality of states', Vincent argues, "flows from an 'egg-box' conception of international society":

> Sovereign states are the eggs, the goodness within contained by a (fragile) shell. The box is international society, providing a compartment for each egg, and a (less fragile) wall between one and the next. The general function of international society is to separate and cushion, not to act.[191]

However, just two pages on he suggests two modifications to the 'egg-box', the first of which is relatively 'modest' and aims to make international society work better by "allowing counter-intervention to uphold the principle of non-intervention, or assistance for successful secessionist movements practicing the principle of self-determination."[192] However, the second, more ambitious modification "may presage structural change in world politics" and is, at heart, the doctrine of humanitarian intervention "which obliges a response from outsiders if a state by its conduct outrages the conscience of mankind."[193]

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[190] R.J. Vincent, *Human Rights and International Relations*, (Cambridge: Cambridge University Press, 1986), p.114.

[191] *ibid.*, p.123.

[192] *ibid.*, p.125.

[193] *ibid.*

In doing so, Vincent inadvertently paved the way for the association of Hugo Grotius with the concept of humanitarian intervention that emerged shortly after. It is important to note however, that although a number of those theorists explicitly derive this association from Vincent, he did not wholly endorse it himself. In this vein, Vincent argues that "while it is possible to read into his work the basis of a fully fledged principle of non-intervention, and also a doctrine of humanitarian intervention as an exception to it, it is anachronistic to take Grotius' writings as indicating the arrival of these ideas in international society."[194] Significantly, what he does concede is that "themes which arise from Grotius' work...give shape to the contemporary discussion of human rights and intervention."[195] Thus, these themes will be discussed in the conclusion to this thesis.

The Grotian Tradition and Humanitarian Intervention

In more recent scholarship, International Relations has witnessed the emergence of a subsidiary strand of the 'Grotian tradition' concerned explicitly with the doctrine of humanitarian intervention. Emanating from the works of Bull and Vincent, this tributary of the 'Grotian tradition' seeks to theorise humanitarian intervention by reference to elements of the wider 'Grotian tradition', as constructed by Lauterpacht, Wight and Bull, interspersed with tracts of Grotius' actual works. For example, both Oliver Ramsbotham's 'reconceptualisation' of humanitarian

[194] R.J. Vincent, "Grotius, Human Rights, and Intervention", in *Hugo Grotius and International Relations,* ed. Hedley Bull, Benedict Kingsbury and Adam Roberts, (Oxford: Clarendon Press, 1990), p.242.

[195] *ibid.*

intervention and Adam Roberts' 'humanitarian war' are explicitly derived from Vincent's *Nonintervention and International Order.*[196] On the other hand, Nicholas Wheeler's *Saving Strangers* aims to build on Bull's contribution by demonstrating the extent to which contending concepts within his work "generate competing approaches to the legitimacy of humanitarian intervention."[197] By doing so, such theorists have unwittingly contributed to the perpetuation of Bull's convoluted branch of the 'Grotian tradition'.

In particular, both Bull's contending 'pluralist' and 'solidarist' approaches to international society and the firm distinction he makes between principles of order and justice from which they are derived, are especially applicable to the concept of humanitarian intervention. As Nicholas Wheeler and Justin Morris argue, illustrating the tension inherent within the concept of humanitarian intervention, "conflict between order and justice is revealed in its starkest form in those exceptional cases of human suffering that are triggered either by the breakdown of the state into anarchy and civil war, or by the genocidal practice of governments

[196] Oliver Ramsbotham, "Humanitarian intervention 1990-5: a need to reconceptualize?", *Review of International Studies*, Vol.23, No.4, (October 1997), pp.445-468; Adam Roberts, "Humanitarian War: Military Intervention and Human Rights", *International Affairs*, Vol.69, No.3, (July 1993), pp.429-450; R.J. Vincent, *Nonintervention and International Order*, (Princeton: Princeton University Press, 1974).

[197] Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford: Oxford University Press, 2000), p.12.

and ethnic militias competing for control of the state."[198] Similarly, despite arguing that the line-up is somewhat too simplistic, Oliver Ramsbotham recognises that the question of humanitarian intervention "is often said to represent a conflict between concepts of sovereignty, order and non-intervention on the one hand, and human rights, justice and intervention on the other."[199] With this, it is immediately apparent that even on a fairly superficial level, Bull's scheme stands as a pervasive structure dictating and directing the theorisation of other concepts in international relations.

Definitions of humanitarian intervention that begin from an understanding of international society generally take as their starting point a recognition of the primacy of the principle of non-intervention to the maintenance of order in international relations.[200] In this vein, humanitarian intervention is usually defined as an exception to the rule of non-intervention and is specified as the "use of force by one state against another to protect the nations of the latter from acts or omissions of their own government which shock the conscience of mankind."[201] In accordance with the centrality of the principle of non-intervention to the maintenance of order in the international states system however, debates surrounding the theorisation of humanitarian intervention tend to pivot about the critical question of whether or not the practice ought to be justified. In light of the

[198] Nicholas Wheeler and Justin Morris, "Humanitarian Intervention and State Practice at the End of the Cold War", in *International Society after the Cold War: Anarchy and Order Reconsidered,* ed. Rick Fawn and Jeremy Larkins, (Houndsmill: Macmillan, 1996), p.135.

[199] Ramsbotham, "Humanitarian intervention 1990-5", p.446.

[200] Bruce D. Jones, "'Intervention without Borders': Humanitarian Intervention in Rwanda, 1990-94", *Millennium: Journal of International Studies,* Vol.24, No.2, (Summer 1995). p.228.

[201] *ibid.*

contending conceptualisations of international society and their contingent approaches to the supposed tension between order and justice within it, Bull's distinction between pluralism and solidarism is particularly instructive here.

As Wheeler explains, adopting Bull's schematization, "[p]luralist international-society theory defines humanitarian intervention as a violation of the cardinal rules of sovereignty, non-intervention and non-use of force."[202] At heart, this failure to endorse the practice of humanitarian intervention is derived from the reasoning that, as "agreement is not possible on universal principles of human rights, any attempt to impose what must necessarily be a particularist value would disrupt order" in the international system.[203] Extending this notion, and also revealing their reliance on Bull's scheme, Ramsbotham and Woodhouse contend that although there is "enough commonality to generate rules of association that are generally respected" in international relations, from a pluralist perspective, not enough commonality exists "to overcome local particularisms" that could potentially disrupt order.[204] Conversely, the solidarist approach acknowledges that states have a responsibility not only "to protect the security of their own citizens, but also...[a] wider one of 'guardianship of human rights everywhere'."[205] In this vein then, *Saving Strangers* proceeds by making the 'solidarist' claim that "*states that massively violate human*

[202] Wheeler, *Saving Strangers,* p.11.

[203] Nicholas Wheeler, "Pluralist or Solidarist Conceptions of International Society: Bull and Vincent on Humanitarian Intervention", *Millennium: Journal of International Studies,* Vol.21, No.3, (Winter 1992), p.471.

[204] Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization,* (Cambridge: Polity Press, 1996), p.31.

[205] Wheeler, *Saving Strangers,* p.12.

rights should forfeit their right to be treated as legitimate sovereigns, thereby morally entitling other states to use force to stop the oppression."[206]

As with the presentation of their contending approaches to international society, so Oppenheim and Grotius are deemed illustrative of the pluralist and solidarist positions on humanitarian intervention. However, although Oppenheim certainly voiced reservations about the notion of humanitarian intervention, arguing, somewhat skeptically that "[n]o State will ever intervene in the affairs of another if it has not some important interest in doing so", he did concede the possibility of justifying collective intervention.[207] Thus, writing in 1919, he doubts that "there really is a rule of the Law of Nations which admits such interventions", but acknowledges that "public opinion and the Powers are in favour of such interventions" and that, "it may perhaps be said that in time the Law of Nations will recognise the rule that interventions in the interest of humanity are admissible, provided they are exercised in the form of a *collective* intervention of the Powers."[208]

Similarly, with the apparent ability of solidarism to justify the practice of humanitarian intervention, its representative, Hugo Grotius, has not only been reconnected to the concept but once again heralded the 'father of humanitarian intervention'. Indeed, following this admittedly understandable trend, in seeking to

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[206] *ibid.*, p.12-13. Italics in text.

[207] Oppenheim, p.230, 229.

[208] *ibid.*, p.229.

locate the historical origins of the concept of humanitarian intervention, Wheeler writes that "lawyers date the origins of the doctrine to the seventeenth-century Dutch international lawyer Hugo Grotius, who considered the rights of the sovereign could be limited by principles of humanity."[209] Similarly, despite recognising the possibility of its earlier origins, Simon Chesterman writes that;

> The classical origins of what became known as humanitarian intervention lie in the emergence of a substantive doctrine of the just war in the Middle Ages. This was developed in large part by the scholastics, but achieved its most comprehensive and widely publicised form in the work of the Protestant Hollander Hugo Grotius.[210]

However, as revealed in Chapter Three, claims that Grotius ought to be considered the father of humanitarian intervention, although obviously derived from his position within the theoretical construction of the solidarist approach to international society, are ill-conceived. Although this is not immediately critical to the theorisation of humanitarian intervention itself – although, its ramifications may well be – it serves as a warning that something has gone seriously awry in the construction of the 'international society approach' to international relations.

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[209] Wheeler, *Saving Strangers,* p.45.

[210] Simon Chesterman, *Just War or Just Peace? Humanitarian intervention and international law,* (Oxford: Oxford University Press, 2001), p.9.

Conclusion

What the assertion that Grotius ought to be considered the 'father of humanitarian intervention' reveals is the extent to which the historical figure of Hugo Grotius has been obscured in International Relations scholarship. As illustrated above, this has particularly been the case amongst theorists of the 'English School' and their intellectual predecessors. For Hersch Lauterpacht and Martin Wight, the Grotian tradition was simply an intermediary category of international legal scholarship that stood between the dominant natural and positive law traditions. According to Lauterpacht, in an analytical sense, Grotius was not a 'Grotian', however in Wight's incarnation, Grotius is both a 'Grotian' and a 'rationalist', although he is not the only or most important member of either of these categories. Similarly, for Hedley Bull, Grotius is a 'Grotian' and a 'rationalist'. However, in Bull the 'Grotian tradition' is not only synonymous with rationalism, as conceived by Wight, but also represents a subdivision of the rationalist tradition alongside 'pluralism'. However, in this vein, it is not logically clear why 'pluralism' is not also 'Grotian'. In particular, given that Grotius' work contains both 'solidarist' and 'pluralist' ideas, and the manner in which the pluralist category is constructed by fusing a broadly conceived notion of the 'Grotian' with elements of realist and legal positivist thought, this seems to suggest that Bull's pluralist/solidarist division is, in fact, a false one. Next, in an attempt to pin some sort of definition to the 'Grotian tradition', contemporary theorists such as Robert Jackson, have simply asserted that Grotians are 'international society theorists' and, although Grotius is occasionally mentioned, his position within this 'Grotian' tradition is rarely considered. Finally,

this 'international society approach', complete with its 'solidarist' and 'pluralist' variants, has been applied to the concept of humanitarian intervention, leading to the re-emergence of the erroneous claim that Grotius was the 'father of humanitarian intervention'.

However, what is particularly significant here is not simply the designation of the 'Grotian tradition' as a tradition of thought about international society, but the simultaneous invention of what might be called an 'international society tradition'. In this vein, Bull depicts the development of the concept of international society as beginning in the fifteenth, sixteenth and seventeenth centuries with the natural law writings of thinkers such as Vitoria, Suarez, Gentili, Grotius and Pufendorf that emerged in reponse to the "social and moral vacuum left by the receding *respublic Christiana*", continuing in a distinctly 'European' frame in the eighteenth and nineteenth century writings of Wolff, Vattel, Moser, Burke, von Martens, Gentz, Heeren and others, before emerging as the concept of 'world international society' in the twentieth century.[211] However, as discussed earlier in this and the previous chapter, 'international society' is a conceptual conglomerate, fundamentally constituted by the fusion of two antecedent sets of ideas, those pertaining to the functioning of the *jus gentium* in the *societas gentium* and the existence of a *Staaten-system* whilst retaining elements of the *civitas maxima* and *respublica Christiana.*

[211] Bull. *The Anarchical Society*, p.26-36, quote at p.26.

In this sense, the history of the idea that is 'international society' may be considered a 'scissors-and-paste' affair.[212] However, until the mid-twentieth century, Grotius was associated with only one piece of the international society jigsaw. As discussed in Chapter Three, although Grotius includes a number of concepts somewhat akin to notions of the *societas gentium*, 'international society' is not coherently or consistently conceived in his works. With this in mind, it would make as much sense to herald Francisco de Suárez with his notion of *societas gentium*, Richard Zouche on account of his identification of the *jus inter gentes* or Christian von Wolff for his devotion to the *civitas maxima*, the 'midwife' of international society, as Bull describes Grotius.

The 'Grotian tradition' of Bull's construction is similarly an exercise in 'scissors-and-paste' history, only here the cut-outs include elements of both what it means to be 'Grotian' and what is constituted by a 'tradition'. Bull's Grotian tradition is therefore a collage, cut primarily from the scholarship of Grotius, Lauterpacht, Oppenheim and Wight with little consideration of the fact that they are talking about distinctly different things. Pasted together, elements of these writers' works are fused to form a new, largely unrecognisable picture of both Grotius and what it means to be 'Grotian'.

[212] Rengger, *International Relations, Political Theory and the Problem of Order*, p.77.

VII

Conclusion: Hugo Grotius and the 'Grotian Tradition' in International Relations

From the outset, this thesis has sought to address two specific sets of questions. In the first instance, it has sought to ascertain precisely what it means to be 'Grotian', both in relation to Hugo Grotius and as the term has been employed in subsequent scholarship. In doing so, it has considered three particular sets of texts. First, Chapter Three considered a range of Grotius' works that are of relevance to the study of international relations. Thus, in addition to explicating the central themes of *De Jure Belli ac Pacis*, it also traced the development of Grotius' thought in his earlier and less well known works, *De Republica Emendanda, De Antiquitate Reipublicae Batavicae, Commentarius in Theses XI, Mare Liberum* and *De Jure Praedae*. The second set of texts considered were those in which key elements of Grotius' thought were later developed and includes the works of Samuel Pufendorf, Jean Barbeyrac, Gottfried Wilhelm von Leibniz, Christian von Wolff, Emerich de Vattel, James Kent and Henry Wheaton. Together, this set of writers stand as the intellectual precursors of the Grotian traditions of the twentieth century. Finally, the third set of texts considered are those in which the formally constituted variants of the Grotian tradition emerged and have developed in twentieth century scholarship. This set of texts includes the works of Cornelius van Vollenhoven, J.L. Brierly, Lassa Oppenheim, Georg Schwarzenberger, Hersch Lauterpacht, Martin Wight,

Hedley Bull, R.J. Vincent and, in contemporary scholarship, Tim Dunne, Robert Jackson, and Nicholas Wheeler.

The second set of questions with which this thesis has been concerned has sought to ascertain precisely what it means to designate a set of thinkers or ideas a 'tradition' and highlight some of the epistemological ramifications of doing so. In the first instance, this line of inquiry has been pursued in purely theoretical terms. Thus, Chapter Two considered how the term 'tradition' is best conceived and, in light of its historical implications, concluded that all traditions, like all forms of history, are, in an Oakeshottian sense, invented. By applying a set of methodological principles derived from Brian Schmidt's 'critical internal discursive' approach to the analysis of traditions, the remainder of the thesis proceeded by considering the sense in which the Grotian tradition, in its various forms, was itself invented. In doing so, it asked precisely what individual proponents of the Grotian tradition have meant by its designation as a tradition and, by extension, how their particular understanding of what is constituted by a tradition has impacted the epistemological contents and membership of the Grotian tradition itself.

Considered together these two lines of inquiry constitute an intellectual history of the Grotian tradition from Hugo Grotius to the contemporary writings of the English School. Its central argument contends that the Grotian tradition is a tradition of thought about law and morality, understood not as two separate entities, but in terms of their relationship to one another. It is in essence, if not always in

substance, derived from the synthesis of law and morality evident in *De Jure Belli ac Pacis*, although in subsequent scholarship it has assumed a wide variety of guises. By extension, this thesis therefore also argues that contrary to its contemporary conceptualisation, the Grotian tradition has not, historically speaking, been a tradition of thought about international society. Rather, this union coincided with the emergence of more sophisticated conceptualisations of international society in the writings of Martin Wight and, in particular, Hedley Bull. However, this is not to suggest that events in the development of the concept of international society did not have an impact upon the evolution of the Grotian tradition, or that law and morality do not constitute an essential part of contemporary conceptions of international society. Rather, it simply serves to suggest that international society has not been the central focus of either Grotian scholarship or the Grotian tradition for much of its existence.

The 'Grotius problem'

The explication of the central argument of this thesis has required a fundamental reconceptualisation of both the historical figure of Hugo Grotius and the contents of his works. This has been achieved in the first instance via a sustained engagement with a wide range of Grotius' works including, in addition to his 'international legal' works, those texts ordinarily categorised as works of history, jurisprudence and theology. What is more, in providing a more holistic treatment of Grotius than he is ordinarily afforded in International Relations scholarship, a concerted effort has been made not to prefigure the interpretation of his texts either by relying on the

interpretations of identified 'Grotians' or by attempting to categorise Grotius' thought according to a set of retrospectively conceived intellectual traditions. As such, the consideration of the intellectual, and for that matter, historical, political and personal, contexts in which Grotius wrote, has been limited to those he self-consciously identifies as sources of inspiration.

Contrary to his contemporary characterisation therefore, Grotius is presented not as the 'father of international law', 'seculariser of the law of nature', 'midwife of international society', or even as a proponent of the doctrine of humanitarian intervention, but in terms of what has been called 'Grotian morality'. As discussed in Chapter Three, Grotian morality is a three-tiered moral scheme devised in response to a number of personal and historical tensions with which Grotius was faced. It is constituted by three interweaving layers of morality derived from the law of nature, the central precepts of the just war tradition, and the Christian law of love. Although it was not until the twentieth century work of Hersch Lauterpacht that all three tiers of Grotius' scheme appeared together under the banner of the 'Grotian tradition', albeit in a secular form, Grotian scholarship was sustained in the interim by the continuing appeal of its constituent parts.

In the first instance, Samuel Pufendorf drew upon Grotius' work, presenting an even more forcefully argued case for the application of the law of nature to the conduct of nations than his intellectual 'father' had done, reorienting Grotius' natural law theory in accordance with principles of moral voluntarism and

attempting, unsatisfactorily, to resolve the problem of obligation inherent in it. Despite a period of relative moral downturn in the works of Wolff and Vattel, the early nineteenth century saw the revival of an explicitly Christian Grotian morality at the hands of James Kent and Henry Wheaton. Similarly, the early twentieth century saw the return of Grotius' works to mainstream international scholarship with Cornelius van Vollenhoven's solid defence of Grotius' works and appeal to the principle of *temperamenta* and precepts of the *jus caritas*. At the same time, elements of Grotian natural law morality were evident in the 'idealist' international works of theorists such as J.L. Brierly, while Georg Schwarzenberger identified a Grotian tradition of morality standing between those derived from the natural and positive legal traditions. However, Hersch Lauterpacht undoubtedly stands as the most important proponent of Grotian morality since Hugo Grotius himself. Indeed, it is in Lauterpacht's conceptualisation of the Grotian tradition of international law that all three tiers of Grotius' moral scheme not only appear but are specifically directed towards the regulation of state conduct. Finally, as indicated in the previous chapter, it is this form of the Grotian tradition that appears in the works of Martin Wight and is there categorised under the broader banner of the rationalist tradition.

Thus, although a direct pattern of transmission cannot be discerned linking Grotius through successive generations of scholars to the twentieth century, it is clear that the Grotian moral tradition not only owes its origins to the seventeenth century thinker but retains at least a minimal responsibility to his ideas. However,

conceiving Grotius and the Grotian tradition in this manner is not possible without acknowledging that Grotius was not simply an international lawyer, politician, diplomat and historian, but a theologian and committed Christian. In this vein, a possible reason for the overwhelming neglect of the moral element of Grotian scholarship in International Relations is the reticence with which Christian based morality is approached in contemporary scholarship. As Scott M. Thomas writes, scholars are often reluctant "to examine the personal beliefs, particularly the religious beliefs, of scholars because it can cross uncomfortably the boundaries of private and public life."[1] This is all very well and good in those instances in which scholars have sought to draw a firm line of demarcation dividing their private from their scholarly life. However, it is counterproductive in those instances in which they have not. Thus, to attempt to interpret Grotius' works in isolation from the religious beliefs and theological ideas that permeate his writings is to risk fundamentally distorting the very nature of the man. As is evident throughout his work, Grotius is as comfortable incorporating tracts of biblical exegesis in a so-called work of 'international law' such as *De Jure Belli ac Pacis* as he is discussing contending conceptualisations of sovereignty in those works later classified as 'theological'. Although the last outwardly Christian account of Grotian morality appeared in the early nineteenth century work of James Kent, elements of Grotius' Christian morality remained central to the Grotian tradition well into the twentieth century. Thus, although for understandable reasons Lauterpacht dropped the explicitly Christian element of this higher morality in his incarnation of the Grotian

[1] Scott M. Thomas. "Faith, history and Martin Wight: the role of religion in the historical sociology of the English school of International Relations", *International Affairs,* Vol.77, No.4, (2001), p.907.

tradition, he too incorporated its fundamental principles. Similarly, although it is not afforded a great deal of attention in his works, a sense of the Christian morality of the Grotian tradition is also retained in Martin Wight's thought. It is therefore not at all surprising that the point of disjuncture at which the Grotian tradition was transformed from a tradition of thought about morality to a tradition of thought about international society coincided with the contribution of Hedley Bull whose sceptical attitude towards Christianity is renowned.

However, the experience of Grotius in the secular world of International Relations is not unique. Foremost amongst twentieth century scholars whose theological ideas have been marginalised or flatly ignored is the radical theologian and realist international relations theorist Reinhold Niebuhr. For example, despite acknowledging that *The Nature and Destiny of Man,* a heavily theological piece, is Niebuhr's most important work, it is dismissed as being "likely to be of interest only to those with a serious theological or philosophical bent" in Jack Donnelly's work, *Realism and International Relations.*[2] Similarly, although Torbjørn Knutsen's *A History of International Relations Theory* recognises that Niebuhr "provided the moral foundation for the new realist approach" that appeared in the 1930s, he does not consider its theological foundations.[3] As such, despite being first and foremost a Christian theologian, Niebuhr is transformed into a wholly secular theorist who,

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[2] Jack Donnelly, *Realism and International Relations,* (Cambridge: Cambridge University Press, 2000), p.40.

[3] Torbjørn Knutsen, *A history of International Relations theory,* (Manchester: Manchester University Press, 1997), p.241.

alongside Hans Morgenthau, is considered one of the two 'formulators' of realist thought. Thus, like Grotius, Niebuhr has come to be characterised in terms of an externally demarcated tradition of thought within which there is little room for ecclesiastically derived thought.

The 'traditions tradition'

As suggested in the opening chapter of this thesis, the 'Grotius problem' is, in many respects, a symptom of the wider set of problems associated with the 'traditions tradition' of International Relations. As introduced in Chapters One and Two, many of the problems associated with the invention of the Grotian tradition center around the conceptualisation of the term tradition itself. Whether employed as a taxonomic device or to designate a self-consciously perpetuated pattern of transmission, the term 'tradition' brings with it a range of historical and epistemological connotations. Whether intentionally or not, traditions infer an inherent connection to the past and, in most instances, make certain sets of assumptions about its origins. They demarcate who and what is 'in' and, in doing so, create linkages between both thinkers and their ideas.

As demonstrated in Chapters Five and Six, the term 'tradition' has been used to varying effect in the invention of the Grotian tradition. In particular, it could be argued that many of the problems associated with the convoluted and conceptually entangled contemporary Grotian tradition stem from Bull's failure to understand the sense in which Wight used the term tradition itself; that, as Jens Bartelson points

out, he transformed a set of traditions defined in terms of conceptual coherence to ones marked by continuity.[4] However, this seems slightly disingenuous. After all, Wight did himself seem to oscillate between viewing traditions as vague paradigmatic entities and conceiving them, more conventionally, as direct patterns of transmission. Similarly, following a long-standing tradition of international legal scholarship that stretches back at least as far as Henry Wheaton, Hersch Lauterpacht includes in his work a 'Grotian tradition' that is simply a taxonomic category and that does not infer any notion of transmission.

Beyond apportioning blame for the current state of the Grotian tradition however, what is clear is that Brian Schmidt's contention that International Relations has been marked by a "tendency to view an *analytical* tradition as an actual *historical* one" is borne out in this context.[5] In particular, a distinct move from an analytically constituted Grotian tradition evident in the international legal scholarship of the nineteenth and early twentieth centuries to an historical tradition can be identified in the transmission of ideas from Wight to Bull. In particular, whereas the Grotian tradition was previously conceived as an intermediary category of thought, when associated with the concept of international society in Bull's work, it becomes an historical tradition starting with Grotius, himself deemed to have 'followed' Vitoria, and extending to Pufendorf, Wolff, Vattel and so on and so forth. What has resulted

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[4] Jens Bartelson, "Short circuits: society and tradition in international relations theory", *Review of International Studies,* Vol.22, (1996), p.347.

[5] Brian C. Schmidt, *The Political Discourse of Anarchy: A Disciplinary History of International Relations,* (Albany: State University of New York Press, 1998), p.25.

is the entirely anachronistic characterisation of these and other writers who extend the path of transmission into the twentieth century as 'Grotians' as defined by Bull in terms of international society.

These findings also accord well with Schmidt and Gunnell's criticisms of the 'grand tradition' of international relations theory on two separate fronts. As mentioned above, International Relations' proclivity for the invention of 'grand traditions' is played out with the construction of a single Grotian tradition extending from Grotius through almost four hundred years to the scholarship of Martin Wight and Hedley Bull. Secondly, and as hinted at in the conclusion of the previous chapter, the invention of the 'international society tradition' is similarly 'grand' in orientation. Here, as with the invention of the contemporary Grotian tradition, Hugo Grotius is appropriated as the great classical scholar from which an apparently grand tradition of thought is derived. However, what we have in both cases is an analytical tradition that groups together a range of thinkers who have contributed elements of a modern conceptual composite, such as 'international society' or 'Grotianism', masquerading as an historical tradition.

As indicated in the opening chapter of this thesis, a number of specific problems are associated with the construction of traditions in this manner. In a methodological sense, the invention of a grand 'Grotian' or 'international society' tradition, conceived in accordance with their contemporary conceptualisations will inevitably entail, at the very least, the implicit prefiguring of the works included. For example,

as demonstrated in Chapter Three, in contemporary scholarship the designation of the Grotian tradition as a tradition concerned with the concepts of international society and humanitarian intervention has lead to an entirely anachronistic reading of *De Jure Belli ac Pacis*. On an ontological level, the placement of a thinker in a retrospectively conceived tradition of thought limits or even precludes the possibility that they might be characterised in an alternative manner. As demonstrated above, by interpreting Grotius' works in isolation from his contemporary characterisation it has been possible to derive an entirely different picture of the man and his works to that ordinarily presented in International Relations scholarship. Finally, the construction of grand traditions as the means according to which present concepts are both explained and lent some sort of historically derived credence is fundamentally epistemologically limiting. In particular, the designation of the Grotian tradition as a tradition of thought about international society left little room for the consideration of Grotius' moral scheme.

As Alastair Murray points out, a similar set of problems has also beset the portrayal of the realist tradition in contemporary International Relations scholarship. According to Murray, realism is similarly a distinct twentieth century tradition, its most prominent proponents including E.H. Carr, Hans Morgenthau, Reinhold Niebuhr, George Kennan, Walter Lippmann and Henry Kissinger. Although the title 'realism' does not impute a necessary association to a great classical thinker, as the Grotian tradition automatically refers to Grotius, the realist tradition has attached itself to the writings of both Machiavelli and Hobbes. Thus, in a similar manner to

the construction of a single Grotian tradition extending from Hugo Grotius to Hedley Bull and beyond, realism has suffered from continual attempts to "construct a 'realist' grand narrative in which historical figures with some affiliation to this mode of thought are lined up in a surreal identity parade of 'the usual suspects'."[6] However, this grand narrative has rendered 'realism' "little more than an arbitrary anachronism, devoid of any positive benefit,"[7] thereby echoing the previous sentiments that question how meaningful a 'Grotian' grand narrative is. In order to overcome this problem, Murray suggests, with regard to the realist tradition, that the ideas of Machiavelli and Hobbes are "better conceived of as distinct traditions of thought in their own right," the label 'realist' being reserved for its modern proponents.[8] In a similar vein, this thesis has designated writers such as Pufendorf, Wolff and Vattel, not as 'Grotians' in a modern sense, but as precursors to the Grotian traditions of the twentieth century.

Of course, Murray's work is not representative of the treatment of realism in mainstream International Relations scholarship but rather stands as a critique and reformulation of the realist tradition. The opening sentence of Jack Donnelly's *Realism and International Relations* is more representative and reads; "The tradition of political realism – *realpolitik*, power politics – has a long history that is typically traced back to the great Greek historian Thucydides in the fifth century

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[6] Alastair J.H. Murray, *Reconstructing Realism: Between power politics and cosmopolitan ethics*, (Edinburgh: Keele University Press, 1997), p.3.

[7] *ibid.*

[8] *ibid.*

BC."[9] Similarly, Martin Wight's conceptualisation of realism accords well with its general treatment in International Relations scholarship:

> [t]he Realist tradition in international theory is as familiar, virtually as self-conscious and as continuous as the Rationalist. At the beginning stands the astonishing figure of Machiavelli, the first man (since the Greeks) to look at politics without ethical presuppositions. He was in a real sense the inventor of Realism.[10]

However, as Wight himself acknowledges, Machiavelli did not see himself as starting a particular strand of thought called realism but was retrospectively identified as its originator. Similarly, although Hobbes, Bodin and Spinoza, amongst others, have been considered his 'followers', none of these thinkers self-consciously thought of themselves as 'realists' or understood themselves to be continuing a pattern of transmission that originated with Machiavelli.

Implications for International Relations

In order to overcome the plethora of problems surrounding the use of the term 'tradition' in International Relations then, more thorough consideration of precisely what it means to designate a set of thinkers of ideas a tradition needs to be incorporated into contemporary scholarship. This does not mean simply identifying

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[9] Donnelly, p.1.

[10] Martin Wight, *International Theory: The Three Traditions*, ed. Gabriele Wight and Brian Porter, (London: Leicester University Press, 1991), p.16.

a range of types of tradition employed in the discipline, as Tim Dunne, and Benedict Kingsbury and Adam Roberts have usefully done, but considering their historical and epistemological ramifications and answering a range of questions associated with them.[11] What specific relationship between past and present does the designation of something as a 'tradition' infer? What do we think the past actually is? Is interpretative authority deemed to reside in past or present elements of a tradition? Are traditions inherently 'invented' phenomena? Must a thinker self-consciously declare membership of an intellectual tradition to be considered part of one? Is the invention of analytical traditions a legitimate scholarly device? What epistemological constraints do traditions confer upon sets of ideas?

Answering these questions ultimately requires engaging seriously in both that area of scholarship known as 'the history of ideas' and the philosophy of history that underpins it. However, 'doing' the history of ideas properly in International Relations requires a fundamental reconsideration of how we 'do' history in general in the discipline. It means engaging in debates *about* history, what it is and how we ought to go about doing it. It means asking serious philosophical questions about what it means to interpret a text or an historical event; for example, how does one go about reading an historical text? Is it accurate to interpret 'great' or 'classic' texts as addressing universal issues and universal audiences? Should a text be

[11] Tim Dunne, "Mythology or methodology? Traditions in international theory", *Review of International Studies,* Vol.19, (1993), pp.305-318; Benedict Kingsbury and Adam Roberts, "Introduction: Grotian Thought in International Relations", in *Hugo Grotius and International Relations,* ed. Hedley Bull, Benedict Kingsbury and Adam Roberts, (Oxford: Clarendon Press, 1990), pp.1-64.

considered in isolation or should it be interpreted in terms of the context in which it was written? If so, which contexts should the interpreter consider and how much interpretive weight do they carry? How does one reconcile the inevitable 'filtering' of the interpreter? More fundamentally, as indicated in Chapter Two, we need to decide on an individual basis what our response to the past/present paradox is. For, if 'all knowledge is past knowledge' rather than evidence of present thinking as suggested in this thesis, then the way we 'do' history will be distinctly different to the methods pursued here. This is not to suggest that everyone in the discipline ought to drop what they are doing immediately and start thinking about the history of ideas. Rather, it is merely to suggest that if the discipline as a whole is going to refer to these texts and continue to construct disciplinary histories accordingly, then someone needs to.

The call for serious engagement with the history of ideas has, in itself, two main implications. First, the inclusion of studies such as this within the broad remit of International Relations requires a rethinking of conventional categorisation schemes according to which the discipline is presented. In particular, the designation of works as either positivist or post-positivist is especially problematic as it does not provide room for this area of study. Thus, although the history of ideas is plainly post-positivist in its general orientation, it cannot be equated with any of the specific theoretical frameworks that are categorised within its broader remit. As such, it is most often overlooked as a field of inquiry within International Relations or relegated to the realm of Political Theory.

Thus, the second and related implication of engaging seriously in the history of ideas in the discipline is that the reintegration of International Relations, Political Theory and International Law that has already begun to take place must continue to be reinforced. In particular, as many of the concepts deemed constitutive of contemporary International Relations owe their intellectual ancestry to scholarship that was not officially demarcated as 'International Relations', 'Political Theory' or 'International Law', the barriers that demarcate these three 'disciplines' are not only artificial but epistemologically limiting. In this vein, it is also possible to argue in favour of the reintegration of theological thought with International Relations scholarship, although it is more than likely that this would be even less enthusiastically received than the integration suggested above.

However, this thesis stands as testimony to the extent to which the widely adhered to disciplinary boundaries that demarcate International Relations, International Law and Political Theory are, in fact, false ones. As made evident in Chapters Three and Four, for much of the four hundred years that have elapsed since Grotius' time, no distinction existed between International Relations and International Law. For example, writers such as Pufendorf, Wolff, Vattel and even Grotius himself, cannot possibly be considered either international relations theorists or international lawyers; plainly they are both. Even as late as the 1940s, amongst idealist thinkers in particular, little distinction was recognised between International Law and International Relations. In this vein, their premier project and intellectual focus, the

League of Nations, was simultaneously an institution of international relations and international law, and as such, its proponents straddled the dividing line between the two disciplines. Thus, as discussed in Chapter Five, it was not until the rise to prominence of both realist and positivist thought that an absolute demarcation of International Relations and International Law was achieved. However, in recognition of their historical and conceptual proximity, contemporary writers such as Anne-Marie Slaughter Burley and Kenneth Abbott have identified a number of 'sites' at which International Law and International Relations might be rejoined.[12] Thus, the history of ideas in international thought stands alongside regime theory and the conceptualisation of international society as a further possible site of reintegration.

Similarly, as discussed in the opening chapter of this thesis, the commonly held distinction between Political Theory and International Law is also an artificial construction. As Stephen J. Toope points out, although they appear to reside in "almost hermetically sealed chambers" in contemporary scholarship, scholars of International Relations and International Law rely on the same "sources of inspiration" for their ideas; for example, the works of Plato, Grotius, Pufendorf and

[12] Anne-Marie Slaughter Burley, "International Law and International Relations Theory: A Dual Agenda", *American Journal of International Law,* Vol.87, No.2, (April 1993), pp.205-239; Kenneth Abbott, "International Relations Theory, International Law and the Regime: Governing Atrocities of International Conflicts", *American Journal of International Law,* Vol.93, No.2, (April 1999), pp.361-379; Anne-Marie Slaughter, Andrew S. Tulumello and Stepan Wood, "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship", *American Journal of International Law,* Vol.92, No.3, (July 1998), pp.367-397.

Kant.[13] In particular, the accepted foundations of modern international law are found, not in a distinct discipline titled 'international law', but in writings on the law of nature that could equally be considered works of political theory.

Perhaps the most important of all however, is the artificial demarcation of International Relations and Political Theory that marks contemporary scholarship. In part at least, this distinction has been facilitated by International Relations' overwhelming desire to view itself as a distinct discipline. Thus, in accordance with the search for an individual identity, International Relations has promulgated a mythical story within which its origins are located in the early twentieth century and its development is traced through three, or perhaps even four successive 'great debates'. Two main problems are associated with this. First, in the sense that is inferred by this conventional form of disciplinary history, International Relations only really emerged as a distinct scholarly discipline in the 1930s and 1940s. Thus, although it had existed since 1919, it was almost twenty years before writers such as E.H. Carr began to think of themselves as international relations theorists and compose their works accordingly. As mentioned above, prior to then, particularly with the works of the 'idealists', the central concerns of international relations were not considered in isolation but intermingled with political and international legal thought. Secondly, by fixing the origins of International Relations in this manner, the discipline denies itself much of its history prior to then. Of course the study of

[13] Stephen J. Toope, "Emerging Patterns of Governance and International Law", in *The Role of Law in International Politics: Essays in International Relations and International Law,* ed. Michael Byers, (Oxford: Oxford University Press, 2000), p.91.

international relations did not begin in 1919 but had been pursued for hundreds, if not thousands of years in a range of areas now understood as distinct disciplines, in particular, political theory. In implicit recognition of this, as mentioned in the opening chapter of this thesis, much of the exercise of compiling a 'canon' of International Relations classics has therefore entailed the pillaging of those works from the realm of political theory that address 'international' concerns. What this phenomenon indicates is not only the fact that a disciplinary distinction has not always been observed between International Relations and Political Theory but, in a more practical sense, that "there have been many periods in the past when a clear-cut distinction between the "international" and the "domestic" has not existed.[14] As demonstrated in Chapter Three, this is certainly the case with regard to the works of Hugo Grotius.

Within the development of Grotian scholarship from Grotius to the twentieth century no reasonable distinction can be drawn between Political Theory, International Relations and International Law. As a tradition of thought, the Grotian tradition spans all three disciplines, not by self-consciously incorporating elements of each 'discipline', but by refusing to acknowledge their distinction. Thus at the outset, although natural law theory is most commonly viewed as a facet of political thought, within the context of Grotian morality it is equally concerned with 'domestic' matters of human nature and political community, and 'international'

[14] Chris Brown, Terry Nardin and Nicholas Rengger, "Introduction", in *International Relations in Political Theory: Texts from the Ancient Greeks to the First World War,* (Cambridge: Cambridge University Press, 2002), p.1.

conflict between states. Similarly, as morally equivalent entities, the higher morality that is defined in terms of *temperamenta* and the *jus caritas* is equally applicable to individuals and states in Grotius' scheme. Finally, and in accordance with Grotius' central aim, the limitation and regulation of war, the central elements of Grotian morality are embodied in what is understood in contemporary scholarship to be perhaps the earliest form of modern international law.

By reorienting the Grotian tradition in this manner, that is, as a tradition of moral thought that spans the (artificial) boundaries of International Relations, International Law and Political Theory, this thesis opens the way for it to contribute once more to debates about morality in international thought. Thus, rather than simply existing as a classification device, the Grotian tradition can be more profitably employed to address a range of questions that are pertinent to contemporary International Relations. In particular, the reorientation of the Grotian tradition in this manner entails its dissociation from the concept of international society with which it has been commonly equated. This is not to suggest that there is anything inherently wrong with the idea of international society itself. On the contrary, although, like most ideas, a range of problems are associated with its conceptualisation, international society remains a useful and seductive one. However, the main point here is that despite its individual merits, international society was not amongst Grotius' central concerns.

Rather, where the works of Grotius and the Grotian tradition that followed can contribute to the theorisation of international society is in their application to the range of normative and moral questions that surround it. For example, a reoriented Grotian tradition could contribute to Tim Dunne's 'radicalisation' of the English School by providing a strong moral dimension, grounded in a set of core values, that is otherwise lacking from Bull's conception of international society. For writers such as Nicholas Wheeler who have, in recent years, grappled with the inherent tension between the rights of the individual and the rights of the state that are brought to the fore by the doctrine and practice of humanitarian intervention, both Grotius' works and the Grotian tradition could provide an alternative set of principles according to which questions about its morality can be approached: Is humanitarian intervention a morally justifiable exercise? What does this tell us about the relative moral standing of the individual and the state?

Furthermore, and of increasing pertinence in contemporary scholarship, a reoriented Grotian tradition is capable of contributing to debates surrounding whether or not the principles of the just war tradition provide a sufficient set of guidelines for the regulation and limitation of war. For example, is there a higher set of moral principles in existence that could indicate what constraints ought to be placed on the behaviour of combatants in both entering and conducting war? Indeed, in a time when notions of pre-emptive and punitive war are gaining increasing prominence on the global political agenda, questions of restraint are becoming increasingly important. Furthermore, as the horrors and human costs of war become increasingly

apparent to the global public, fundamental moral questions about how humans ought to treat one another, particularly in conflict situations are becoming increasingly pertinent. By focusing the Grotian tradition on these and other moral questions that continue to challenge the discipline, International Relations gains not only a powerful and long-standing tradition of thought, but retains a notion of what it means to be 'Grotian' that is both in essence and in substance true to the ideals and aspirations of Hugo Grotius.

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